

COVID-19 Emergency Response Act and IP Rights

March 26, 2020

The COVID-19 Emergency Response Act received royal assent in Canada on March 25, 2020. It contains amendments to both the Patent Act and the Food and Drugs Act. These amendments are now the law.

Patent Act Amendments

The Patent Act amendments add to the section on the use of patents by government, providing a new compulsory licensing regime. Under new s. 19.4, the Commissioner of Patents shall authorize the Government of Canada as well as any person specified in the application to make, construct, use and sell a patented invention to the necessary extent in order to respond to the public health emergency described in the application. This language tracks s. 43 of the Patent Act with respect to the rights granted to a patentee. Such actions are specifically deemed not to be an infringement of the patent.

The application is to be made by the Minister of Health. Notice is to be provided to the patentee of any authorization granted. In addition, the information in the application must be provided.

The application must:

- Specify the name of the patentee and the patent number;
- Include a confirmation that the Chief Public Health Officer believes there is a public health emergency that is a matter of national concern;
- Include a description of the public health emergency; and
- Specify the person that to be authorized to construct, use and sell the patented invention for the purposes of responding to the public health emergency.

This type of compulsory licence can last a maximum of one year. It will cease to have **effect on the earlier** of the day the Minister of Health notifies the Commissioner that the authorization is no longer necessary to respond to the public health emergency listed in the application and one year after the day on which it is granted. Such authorizations are not transferrable.

The government and any person authorized shall pay what is termed as "adequate remuneration", taking into account the economic value of the authorization and the extent to which the patented invention is made, used, constructed or sold.

The Federal Court has also been granted the power to make an order on application of the patentee, requiring the government or any authorized person to cease making, constructing, using or selling the patented invention in a manner that is inconsistent with the authorization granted.

Compulsory licences of this sort can only be made until September 30, 2020. There are no provisions repealing this new power after that date.

Food and Drugs Act Amendments

A new regulatory power is being added to the Food and Drugs Act allowing regulations requiring persons to provide information to the Minister in respect of food, drugs, cosmetics or devices, or activities relating to these items, in circumstances other than those provided in the Act.

Furthermore, additional regulations can be made to the extent considered necessary for the purpose of preventing shortages of therapeutic products or alleviating those shortages or their effects, to protect human health.

These provisions are repealed, as of October 1, 2020.

BLG has created a [COVID-19 Resource Centre](#) to assist businesses on a variety of topics, including investment management, labour and employment, contractual risks, public disclosure requirements, education and criminal law. For advice with respect to Intellectual Property issues arising from COVID-19, please get in touch with the authors listed below who are ready and available to assist with navigating these unprecedented times.

By

[Beverley Moore](#)

Expertise

[Intellectual Property](#), [Patents](#), [Life Sciences](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2025 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.