

HOW MUCH DOES A CANADIAN PATENT COST?

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Asking how much it costs to get a patent in Canada is a bit like asking how long a piece of string is. The answer, of course, depends on many different factors, but there are a number of general guidelines that can be used to anticipate likely costs that will be incurred over the lifetime of a patent.

Because of their ability to provide their owners with enforceable monopolies on a particular area of technology, patents can be expensive assets to acquire, especially for start-ups and other early-stage companies whose products have yet to be brought to market. That being said, obtaining a patent, from filing all the way through to grant, is generally a long and slow process, and from a cost perspective this has its advantages. While the total cost incurred to obtain and maintain a patent may be significant over the lifetime of the patent, the costs have the benefit of being spread over a number of years, enabling the owners or financiers of the patent to more effectively forecast their IP expenditure. The patent system is also partly designed to include procedural mechanisms for deferring costs, especially at the earlier stages of the process.

1. Drafting

The drafting of the patent application is the most important part of the patent-acquisition process. Not only can a well-drafted patent more easily provide its owner with a broad monopoly, but it also improves the owner's ability to effectively deal with patent office objections once the application is undergoing examination (which by extension can reduce associated costs). Conversely, poorly drafted patents, or patents that have been prepared on a budget (even by a professional), may not be able to provide the scope of protection to which their owner is entitled, and may exacerbate the examination process (leading to increased costs). Therefore, it is important to get the application right the first

time and, accordingly, understand the value in spending an appropriate amount on money on the drafting of a patent application.

The significant effort that goes into capturing the distinctive elements of an innovation in patent claims that are appropriately broad does more than record an invention: it adds value by delineating a scope of legal protection that does justice to the real contribution made. Since compromising on the patent application generally increases the risk that the application will be rejected or invalidated, decisions about patent budgets are in effect decisions about the degree of this risk that is commercially acceptable. Drafting a solid patent application should therefore be seen as an investment as opposed to an expense.

You can generally expect to spend anywhere from about \$5,000 to about \$15,000 for the drafting of a new patent application. The exact amount will vary significantly based on various factors, including, for example, the complexity of the technological area the patent relates to, the completeness of the technical disclosure that you provide to your patent agent, and the number of different inventive concepts that need to be covered in the application.

- **Provisional patent applications**

Drafting a provisional patent application can be an attractive option to those who are particularly cost-conscious, as provisional applications are generally less expensive than complete, non-provisional applications. However, it's important to understand the risks involved with filing a provisional application. While the drafting of a provisional application may set you back less than \$5,000, it will not offer as robust protection as that provided by a non-provisional application, and is more likely to struggle during examination if it is not bolstered after filing. Having said this, some situations do warrant the filing of a provisional application as opposed to a non-provisional application. For example, there may simply not be enough time to prepare a non-provisional application in view of an imminent disclosure of the invention, or the owner may only be interested in asserting a patent pending status with little desire to obtain a granted patent right in the long run.

2. Filing

Once the application has been drafted, it is filed at a patent office (for example the Canadian or US Patent Office). Filing costs vary from country to country. Filing your application in Canada is reasonably cheap, with the official fee being currently set at \$400, although your patent agent will charge a service fee for preparing and filing the application at the Canadian Intellectual Property Office.

It is important to bear in mind, however, that patents are inherently territorial rights, and so a Canadian patent will only get you exclusivity in Canada. Therefore, after your initial patent filing, it is likely that you will ultimately want to extend your protection elsewhere, by filing the application in other jurisdictions of interest. Filing your application in the US may cost anywhere from \$2,000 – \$4,000, while filing a European application could cost anywhere from \$5,000 – \$10,000.

- **The PCT application**

Typically, the above filing costs will be incurred one year after your first filing. However, even one year into the process, it is often the case that the patent owner is unsure as to countries in which they will want to seek patent protection. In addition, filing in multiple countries can be expensive if several different filings are desired. Thankfully, you can defer the costs associated with multiple national filings by an additional 18 months, by filing what is known as an international (or PCT) patent application.

You need to file the PCT one year after filing your initial patent application, following which the PCT will buy you roughly another 18 months before you have to commit to patent filings in any countries of interest. These 18 months are valuable for gauging the viability of the technology covered in the application. For example, the product may be tested on the market, and investor interest may be sought to back the business and help fund the IP acquisition. At the end of the 18 months, you will hopefully have a clearer picture of how to proceed with your PCT application (or whether to proceed with it at all). In addition, during this 18-month period, you will receive a formal patentability opinion from the patent office. The official fees for filing a PCT application are typically in the range of \$3,500 – \$4,500, depending on the size of the application.

3. Prosecution

Prosecution costs are the downstream costs that are incurred during the examination of a patent application. Generally, they are the costs that are incurred by your patent agent for dealing with any objections raised against the application by a patent office examiner. Each patent office at which the application is filed will perform its own, independent assessment of the merits of the application, and for this reason prosecution costs can multiply depending on the number of countries in which patent applications are being pursued.

Unlike drafting and filing costs, the scale and timing of prosecution costs are more unpredictable. This is largely due to the fact that there is never a fully clear picture of how examination of an application will unfold. Therefore, prosecution costs can vary greatly

from one patent to the next, and will depend to an extent on your willingness to fight for broad patent protection. For example, while you may be able to secure broad protection as a result of a protracted examination with a patent office examiner, the associated prosecution costs will be commensurately large. Generally, your patent agent will be able to advise you of the likely costs that will be incurred to deal with a given set of rejections, as well as the likelihood of success of overcoming the rejections.

For "smooth" prosecutions with little or no objection raised against the application, prosecution costs may be as little as \$1,000 or less. Much more typically, prosecution costs run to \$5,000 or even \$10,000 or more for particularly lengthy or complex examinations. Such costs do have the advantage of being spread over a number of years, depending on how speedy the patent office is at examining your application. For instance, some prosecution costs may not begin accruing for five or more years since the patent application was first filed, and hopefully at this stage sales revenues may offset IP-related costs.

4. Maintenance

An annual patent maintenance fee typically has to be paid in order to keep a patent in force. Some patent offices (such as the Canadian and European patent offices) require that this fee be paid while the application is still pending in addition to once the patent has issued. In Canada, the fee starts at around \$100 rising up to \$450 in the later years of the patent's 20-year lifetime. US patent office maintenance fees are more expensive (starting at around \$2,000), but are incurred only every few years as opposed to yearly.

Generally, over the lifetime of a patent, Canada remains a relatively inexpensive jurisdiction compared to other major jurisdictions in which patents are regularly filed.

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