File Number: 33951

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

B E T W E E N:

TEVA CANADA LIMITED

Appellant

- and -

PFIZER CANADA INC., PFIZER INC.,
PFIZER IRELAND PHARMACEUTICALS,
PFIZER RESEARCH AND DEVELOPMENT COMPANY N.V./S.A.
and THE MINISTER OF HEALTH

Respondents

CANADIAN GENERIC PHARMACEUTICAL ASSOCIATION

- and -

CANADA'S RESEARCH-BASED PHARMACEUTICAL COMPANIES

Interveners

REPLY FACTUM OF THE RESPONDENTS, PFIZER CANADA INC., PFIZER INC., PFIZER IRELAND PHARMACEUTICALS, and PFIZER RESEARCH AND DEVELOPMENT COMPANY N.V./S.A.

(Rules 36 & 42 of the Supreme Court of Canada)

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Overview

1. The primary legal question on this appeal, based on the points raised by Teva, is whether Canada has (or should have) judge-made "heightened" disclosure requirements for patents, beyond what is contemplated by the *Patent Act*. Pfizer explained in its original factum why such an approach is inconsistent with the statute, and why retroactively imposing new disclosure requirements would upend the implicit bargain on which patent law is based.

2. This brief supplemental factum will explain why Teva's arguments are also inconsistent with Canada's international obligations. Although Pfizer's position is that the language of the *Patent Act*, and this Court's decisions interpreting it, are sufficient to decide this case, its supplementary arguments are intended to assist the Court in understanding why imposing extra-statutory disclosure requirements would compromise the *Patent Cooperation Treaty* (PCT). It will also briefly address certain arguments advanced by the Canadian Generic Pharmaceutical Association (CGPA) in relation to the PCT and the need for international harmonization. Finally, it will briefly mention one foreign case (cited by this Court in *Sanofi-Synthelabo*) which considers the principles of sufficient disclosure in the context of a PCT-originated patent.

International Harmonization in Patent Law

3. As Justice Binnie recognized in *Harvard College*, "[i]ntellectual property has global mobility, and states have worked diligently to harmonize their patent, copyright and trademark regimes." The importance of harmonization in patent law was also recently recognized by the United Kingdom Supreme Court, in rejecting a challenge to the disclosure of a patent based on an allegation of insufficient information about the usefulness of a novel protein.

> *Harvard College v. Canada (Comm. of Patents)*, 2002 SCC 76 at para. 12, Pfizer's Book of Authorities (PBOA), Tab 16
>
> *Human Genome Sciences Inc. v. Eli Lilly and Company*, [2011] UKSC 51 at paras. 83-84, PBOA, Tab 17

4. Indeed, the need for international coordination in patent law is apparent from numerous international treaties on this topic. For the purpose of this appeal, the most important of these is the PCT, as the 446 Patent issued from a PCT application.

Purpose and benefits of the PCT

5. The primary purpose of the PCT is to allow inventors to file a single "international" patent application. Such an application has the same effect as simultaneously filing patent applications in as many as the 144 countries that have adhered to the PCT.

6. This is a significant convenience. Since all patent systems worldwide are now "first-to-file" regimes, the ability to file a single application in a single office, rather than preparing as many as 144 applications, is a substantial improvement in efficiency, and also promotes fairness for inventors. However, this international system can only operate properly if it also includes limits on the patent disclosure requirements that individual countries can impose.

> G. J. Mossinghoff, "Patent Harmonization through the United Nations: International Progress or Deadlock" (2004) 86 J. Pat. & Trademark Off. Soc'y 5 at 8

7. To obtain a patent, the PCT application must later be entered into "national phase." This is the process by which the relevant authority in each country examines the patent application. It is during this national phase that patentability will be decided in accordance with each country's domestic law. However, as explained below, an inventor's ability to amend his patent application after filing the international application is limited. Thus, the PCT also provides express limits on each adhering country's domestic law concerning what a patent application must disclose.

> Erstling & Boutillon, "The Patent Cooperation Treaty: At the Centre of the International Patent System" (2006) 32 Wm. Mitchell L. Rev. 1583 at 1597-8

The PCT's limits on disclosure requirements

8. The limits on national disclosure requirements set out by the PCT are specified in Article 27. Article 27(1) specifically states that "no national law shall require compliance with requirements relating to the **form and contents** of the international application different from or additional to those which are provided for in this Treaty and the Regulations." This is an express restriction on disclosure requirements.

> *Patent Cooperation Treaty,* 19 June 1970, 1160 U.N.T.S. 231, art. 27(1), Can. T.S. 1990 No. 22, 28 UFT 7647

9. The prohibition against individual countries setting higher standards for disclosure than the PCT requires is reiterated in Article 27(5). This article specifies that countries are free to set

out "substantive conditions of patentability." However, such conditions are permitted only so long as they are not "requirements as to the form and contents of applications." Put another way, a state can set its own rules as to whether an invention is patentable on many bases, but cannot set rules for the form and content of an application that would exceed the international standard.

Patent Cooperation Treaty, art. 27(5)

10. As set out in the Notes on the Patent Cooperation Treaty, disclosure requirements fall squarely within "form and contents," rather than substantive conditions of patentability. In Canada, the required *contents* of a patent application are those set out in s. 27(2) of the *Patent Act*, which states that a patent application must "*contain* (*i.e.*, include as part of its *contents*), a petition (which is irrelevant to this case) and a specification." The requirements of the "specification" are then further specified in s. 27(3), which is the key section on this appeal.

Records of the WIPO Washington Diplomatic Conference on the PCT (1972) at pp. 35-36, Rx&D BOA, Tab 4

Patent Act, R.S.C. 1985, c. P-4, ss. 27(2) and (3)

11. Finally, the PCT sets a maximum – but not a minimum – on what a country can require for patent disclosure. Contrary to what CGPA suggests in paragraph 23 of its memorandum, Article 27(4) specifies that a contracting state can permit an application to contain *less* than what the PCT contemplates; a contracting state is just not permitted to require *more*. This means that the PCT is a "shield not a sword", a patent cannot be invalid for failing to meet the PCT requirements for disclosure. It can only be used to uphold a patent, by requiring that compliance with PCT also means compliance with any domestic standard for disclosure.

Patent Cooperation Treaty, art. 27(4)

Disclosure limits are consistent with the purpose of the PCT

12. Preventing excessive disclosure requirements is consistent with the scheme of the PCT. To ensure the efficiencies that the PCT was intended to provide, inventors must be able to know that they need not exceed the standards for disclosure that the PCT sets out.

13. Conversely, disclosure requirements exceeding those prescribed by the PCT jeopardize an inventor's ability to effectively use the international system to secure a patent in Canada. An application filed through the PCT system – including the disclosure – is considered the original

patent application under Canadian law. Under the *Patent Act*, an applicant has a very limited ability to amend that disclosure after filing. In particular, "matter not reasonably to be inferred from the specification or drawings as originally filed" cannot be added to the specification.

Patent Act, s. 38.2(2)
Patent Rules, SOR/96-423, ss. 58(2) and (6)

14. This restriction on amendments means that, if Canada were to have higher disclosure requirements than is contemplated by the PCT, an applicant would have to either ensure that the international application complies with Canadian law (even though the application may be prepared by any resident or national of, for example, Austria, Costa Rica, Georgia, Madagascar, Senegal, Tunisia, Zambia without any thought given to Canada), or be prepared to risk invalidity in Canada. In either case, this deprives applicants of the benefit that the PCT was meant to confer: the ability to efficiently obtain patent protection (or at least priority) in many jurisdictions, using only a single application.

15. For this reason, the PCT places a real limit on the disclosure requirements that a country can impose on applications that originate through the international system, contrary to paragraph 23 of the intervener CGPA's factum. Indeed, contrary to paragraph 24 of its factum, the benefits of an efficient and effective system for international filing are an excellent reason to ensure that Canada's disclosure requirement do not exceed those limits.

Test for insufficiency of a PCT patent in a foreign court

16. In *Sanofi-Synthelabo*, this Court cited with approval the test for sufficient disclosure articulated by a U.K. Court in *Wobben v. Vestas-Celtic Wind Technology*. In that case, the UK Court evaluated the disclosure of a patent prosecuted through the PCT, and set out five principles that govern the law of sufficient disclosure in the UK:

(a) the specification must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;

(b) the sufficiency of the disclosure must be assessed on the basis of the specification as a whole including the description and the claims;

(c) the disclosure is aimed at the skilled person who may use his common general knowledge to supplement the information contained in the specification;

(d) the specification must be sufficient to allow the invention to be performed over the whole scope of the claim;

(e) the specification must be sufficient to allow the invention to be so performed without undue burden.

Sanofi at para. 36, PBOA, Tab 2

Wobben v. Vestas-Celtic Wind Technology Ltd., [2007] EWHC 2636 (Pat.) at para. 196, PBOA, Tab 18

17. This test is almost identical to the principles this Court articulated for sufficient disclosure in *Consolboard*: looking at the patent as a whole (disclosure and claims), does the disclosure tell a skilled person what the invention is and enable him or her to put it into operation without undue burden? In short, does it answer the questions "what is your [claimed] invention? how does it work?" Disclosure does not require proof of utility, or disclosure of data. That the standards are so similar is not a coincidence. Rather, it is because both Canada and the UK adhere to the PCT, and are therefore precluded from imposing excessive disclosure requirements.

Consolboard at 520, Appellant's Book of Authorities, Tab 11

International harmonization and this appeal

18. Article 27 of the PCT undermines all of Teva's arguments. It prohibits "heightened" or requirements for disclosure (including proof of utility) or any "common law" requirements for the specification arising from President Thorson's reasons in *Minerals Separation*. Rather, it confirms that the requirement of disclosure is satisfied when the patent as a whole answers the two key questions: what is your invention? how does it work? This standard for disclosure properly applies s. 27 of Canada's *Patent Act*, and ensures harmony with the international regime that Canada has implemented. Teva's appeal should therefore be dismissed.

March 19, 2012

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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Of Counsel for the Pfizer Respondents

Authorities

	Authority	*Paragraph(s) in Part III*
1.	*Apotex Inc. v. Sanofi-Synthelabo Canada Inc.*, 2008 SCC 61	16
2.	*Consolboard Inc. v. MacMillan Bloedel (Sask.) Ltd.*, [1981] S.C.R. 504	17
3.	*Harvard College v. Canada (Comm. of Patents)*, 2002 SCC 76	3
4.	*Human Genome Sciences Inc. v. Eli Lilly and Company*, [2011] UKSC 51	3
5.	*Wobben v. Vestas-Celtic Wind Technology Ltd.*, [2007] EWHC 2636 (Pat.)	16

Statutory Provisions and Secondary Sources

Statutes and Regulations	Section Reference
Patent Act, R.S.C. 1985, c. P-4	27(2), 27(3), 38.2(2)
Patent Cooperation Treaty, 19 June 1970, 1160 U.N.T.S. 231, Can. T.S. 1990 No. 22, 28 UFT 7647	27(1), 27(4), 27(5)
Patent Rules, SOR/96-423	58(2), 58 (6)

Secondary Sources

Gerald J. Mossinghoff, "Patent Harmonization through the United Nations: International Progress or Deadlock" (2004) 86 J. Pat. & Trademark Off. Soc'y 5	p. 8
Erstling & Boutillon, "The Patent Cooperation Treaty: At the Centre of the International Patent System" (2006) 32 Wm. Mitchell L. Rev. 1583 at 1597-8	pp. 1597-8
Records of the WIPO Washington Diplomatic Conference on the PCT (1972)	pp. 35-36

CANADA

CONSOLIDATION

CODIFICATION

Patent Act

Loi sur les brevets

R.S.C., 1985, c. P-4

L.R.C., 1985, ch. P-4

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Publication and printing of documents

(2) The Commissioner may publish any document open to the inspection of the public under section 10 and may print or cause to be printed, for distribution or sale, any such document.

R.S., 1985, c. 33 (3rd Supp.), s. 7.

Publication

(2) Le commissaire peut faire publier pour vente ou distribution tout document accessible pour consultation sous le régime de l'article 10.

L.R. (1985), ch. 33 (3e suppl.), art. 7.

APPLICATION FOR PATENTS

DEMANDES DE BREVETS

Commissioner may grant patents

27. (1) The Commissioner shall grant a patent for an invention to the inventor or the inventor's legal representative if an application for the patent in Canada is filed in accordance with this Act and all other requirements for the issuance of a patent under this Act are met.

Délivrance de brevet

27. (1) Le commissaire accorde un brevet d'invention à l'inventeur ou à son représentant légal si la demande de brevet est déposée conformément à la présente loi et si les autres conditions de celle-ci sont remplies.

Application requirements

(2) The prescribed application fee must be paid and the application must be filed in accordance with the regulations by the inventor or the inventor's legal representative and the application must contain a petition and a specification of the invention.

Dépôt de la demande

(2) L'inventeur ou son représentant légal doit déposer, en la forme réglementaire, une demande accompagnée d'une pétition et du mémoire descriptif de l'invention et payer les taxes réglementaires.

Specification

(3) The specification of an invention must

(*a*) correctly and fully describe the invention and its operation or use as contemplated by the inventor;

(*b*) set out clearly the various steps in a process, or the method of constructing, making, compounding or using a machine, manufacture or composition of matter, in such full, clear, concise and exact terms as to enable any person skilled in the art or science to which it pertains, or with which it is most closely connected, to make, construct, compound or use it;

(*c*) in the case of a machine, explain the principle of the machine and the best mode in which the inventor has contemplated the application of that principle; and

(*d*) in the case of a process, explain the necessary sequence, if any, of the various steps, so as to distinguish the invention from other inventions.

Mémoire descriptif

(3) Le mémoire descriptif doit:

a) décrire d'une façon exacte et complète l'invention et son application ou exploitation, telles que les a conçues son inventeur;

b) exposer clairement les diverses phases d'un procédé, ou le mode de construction, de confection, de composition ou d'utilisation d'une machine, d'un objet manufacturé ou d'un composé de matières, dans des termes complets, clairs, concis et exacts qui permettent à toute personne versée dans l'art ou la science dont relève l'invention, ou dans l'art ou la science qui s'en rapproche le plus, de confectionner, construire, composer ou utiliser l'invention;

c) s'il s'agit d'une machine, en expliquer clairement le principe et la meilleure manière dont son inventeur en a conçu l'application;

d) s'il s'agit d'un procédé, expliquer la suite nécessaire, le cas échéant, des diverses phases du procédé, de façon à distinguer l'invention en cause d'autres inventions.

Claims

(4) The specification must end with a claim or claims defining distinctly and in explicit terms the subject-matter of the invention for which an exclusive privilege or property is claimed.

Revendications

(4) Le mémoire descriptif se termine par une ou plusieurs revendications définissant distinctement et en des termes explicites l'objet de l'invention dont le demandeur revendique la propriété ou le privilège exclusif.

Alternative definition of subject-matter

(5) For greater certainty, where a claim defines the subject-matter of an invention in the

Variantes

(5) Il est entendu que, pour l'application des articles 2, 28.1 à 28.3 et 78.3, si une revendica-

de la composition, en suffisante quantité aux fins d'expérience.

Dangerous substances

(2) If the ingredients or composition referred to in subsection (1) are of an explosive or dangerous character, they shall be furnished with such precautions as are specified in the requisition therefor.

R.S., 1985, c. P-4, s. 38; R.S., 1985, c. 33 (3rd Supp.), s. 13.

Substances dangereuses

(2) Si les ingrédients ou la composition sont d'une nature explosive ou dangereuse, ils sont fournis avec toutes les précautions spécifiées dans la réquisition qui en est faite.

L.R. (1985), ch. P-4, art. 38; L.R. (1985), ch. 33 (3e suppl.), art. 13.

Biological material may be deposited

38.1 (1) Where a specification refers to a deposit of biological material and the deposit is in accordance with the regulations, the deposit shall be considered part of the specification and, to the extent that subsection 27(3) cannot otherwise reasonably be complied with, the deposit shall be taken into consideration in determining whether the specification complies with that subsection.

Matières biologiques

38.1 (1) Lorsque le mémoire descriptif mentionne le dépôt d'un échantillon de matières biologiques et que ce dépôt est fait conformément aux règlements, l'échantillon est réputé faire partie du mémoire, et il en est tenu compte, dans la mesure où les conditions visées au paragraphe 27(3) ne peuvent être autrement remplies, pour la détermination de la conformité du mémoire à ce paragraphe.

Deposit not required

(2) For greater certainty, a reference to a deposit of biological material in a specification does not create a presumption that the deposit is required for the purpose of complying with subsection 27(3).

1993, c. 15, s. 41.

Absence de présomption

(2) Il est entendu que pareille mention n'a pas pour effet de faire du dépôt de l'échantillon une condition à remplir aux termes du paragraphe 27(3).

1993, ch. 15, art. 41.

AMENDMENTS TO SPECIFICATIONS AND DRAWINGS

MODIFICATION DU MÉMOIRE DESCRIPTIF ET DES DESSINS

Amendments to specifications and drawings

38.2 (1) Subject to subsections (2) and (3) and the regulations, the specification and any drawings furnished as part of an application for a patent in Canada may be amended before the patent is issued.

Modification du mémoire descriptif et des dessins

38.2 (1) Sous réserve des paragraphes (2) et (3) et des règlements, le mémoire descriptif et les dessins faisant partie de la demande de brevet peuvent être modifiés avant la délivrance du brevet.

Restriction on amendments to specifications

(2) The specification may not be amended to describe matter not reasonably to be inferred from the specification or drawings as originally filed, except in so far as it is admitted in the specification that the matter is prior art with respect to the application.

Limite

(2) Le mémoire descriptif ne peut être modifié pour décrire des éléments qui ne peuvent raisonnablement s'inférer de celui-ci ou des dessins faisant partie de la demande, sauf dans la mesure où il est mentionné dans le mémoire qu'il s'agit d'une invention ou découverte antérieure.

Restriction on amendments to drawings

(3) Drawings may not be amended to add matter not reasonably to be inferred from the specification or drawings as originally filed, except in so far as it is admitted in the specification that the matter is prior art with respect to the application.

1993, c. 15, s. 41.

Idem

(3) Les dessins ne peuvent être modifiés pour y ajouter des éléments qui ne peuvent raisonnablement s'inférer de ceux-ci ou du mémoire descriptif faisant partie de la demande, sauf dans la mesure où il est mentionné dans le mémoire qu'il s'agit d'une invention ou découverte antérieure.

1993, ch. 15, art. 41.

39. to 39.26 [Repealed, 1993, c. 2, s. 3]

39. à 39.26 [Abrogés, 1993, ch. 2, art. 3]

CANADA

CONSOLIDATION

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fice as defined in Article 2(xiv) of the Patent Cooperation Treaty.

58. (1) An applicant who designates Canada, or who designates and elects Canada, in an international application shall, within the time prescribed by subsection (3),

(*a*) where the International Bureau of the World Intellectual Property Organization has not published the international application, provide the Commissioner with a copy of the international application;

(*b*) where the international application is not in English or French, provide the Commissioner with a translation of the international application into either English or French; and

(*c*) pay the appropriate basic national fee prescribed by subsection 3(5).

(2) An applicant who complies with the requirements of subsection (1) after the second anniversary of the international filing date shall, within the time prescribed by subsection (3), pay any fee set out in item 30 of Schedule II that would have been payable in accordance with section 99 or 154 had the international application been filed in Canada as a Canadian application on the international filing date.

(3) An applicant shall comply with the requirements of subsection (1) and, where applicable, subsection (2) not later than on the expiry of

(*a*) the 30-month period after the priority date; or

(*b*) if the applicant pays the additional fee for late payment set out in item 11 of Schedule II before the expiry of the 42-month period after the priority date, the 42-month period after the priority date.

(4) If the applicant provides a translation of the international application into either English or French in accordance with paragraph (1)(*b*) and the Commissioner has reasonable grounds to believe that the translation is not accurate, the Commissioner shall requisition the applicant to provide either

bli, le commissaire agit à titre d'office élu au sens de l'article 2xiv) de ce traité.

58. (1) Le demandeur qui, dans une demande internationale, désigne le Canada ou désigne et élit le Canada est tenu, dans le délai prévu au paragraphe (3) :

a) lorsque le Bureau international de l'Organisation mondiale de la propriété intellectuelle n'a pas publié la demande internationale, de remettre au commissaire une copie de cette demande;

b) lorsque la demande internationale n'est ni en français ni en anglais, de remettre au commissaire la traduction française ou anglaise de cette demande;

c) de verser la taxe nationale de base appropriée visée au paragraphe 3(5).

(2) Le demandeur qui se conforme aux exigences du paragraphe (1) après le deuxième anniversaire de la date du dépôt international verse, dans le délai visé au paragraphe (3), la taxe prévue à l'article 30 de l'annexe II qui aurait été exigible selon les articles 99 ou 154 si la demande internationale avait été déposée au Canada à titre de demande canadienne à la date du dépôt international.

(3) Le demandeur se conforme aux exigences du paragraphe (1) et, s'il y a lieu, du paragraphe (2) dans le délai suivant :

a) dans les trente mois suivant la date de priorité;

b) s'il verse la surtaxe pour paiement en souffrance prévue à l'article 11 de l'annexe II avant l'expiration du quarante-deuxième mois suivant la date de priorité, dans les quarante-deux mois suivant cette date.

(4) Lorsque le demandeur remet la traduction française ou anglaise de la demande internationale conformément à l'alinéa (1)*b*), le commissaire, s'il a des motifs raisonnables de croire que la traduction n'est pas exacte, exige du demandeur qu'il fournisse :

a) soit la déclaration du traducteur affirmant que, à sa connaissance, la traduction est complète et fidèle;

(*a*) a statement by the translator to the effect that, to the best of the translator's knowledge, the translation is complete and faithful, or

(*b*) a new translation together with a statement by the translator to the effect that, to the best of the translator's knowledge, the new translation is complete and faithful.

b) soit une nouvelle traduction ainsi qu'une déclaration du traducteur selon laquelle, à sa connaissance, la nouvelle traduction est complète et fidèle.

(5) Where the applicant who complies with the requirements of subsection (1) is not the applicant originally identified in the international application, the Commissioner shall requisition evidence that the applicant who complies with the requirements of that subsection is the legal representative of the originally identified applicant where the documents already in the Patent Office do not provide such evidence.

(5) Lorsque le demandeur qui s'est conformé aux exigences du paragraphe (1) n'est pas le demandeur désigné initialement dans la demande internationale, le commissaire exige la preuve, si celle-ci ne ressort pas des documents déjà au Bureau des brevets, que le demandeur qui s'est conformé aux exigences du paragraphe (1) est le représentant légal du demandeur désigné initialement.

(5.1) Where the applicant who complies with the requirements of subsection (1) does not comply with a requisition made by the Commissioner pursuant to subsection (5) within three months after the requisition is made, that applicant shall be deemed never to have complied with the requirements of subsection (1).

(5.1) Lorsque le demandeur qui s'est conformé aux exigences du paragraphe (1) ne se conforme pas à l'exigence formulée par le commissaire en vertu du paragraphe (5) dans les trois mois suivant la formulation de cette exigence, il est réputé ne jamais s'être conformé aux exigences du paragraphe (1).

(5.2) The Commissioner is not authorized under subsection 26(1) to extend the time prescribed by subsection (5.1) beyond the later of the expiry of the 6-month period after the requisition is made and the expiry of the 42-month period after the priority date.

(5.2) Le commissaire n'est pas autorisé en vertu du paragraphe 26(1) à proroger le délai prévu au paragraphe (5.1) au-delà de la période de six mois suivant la formulation de l'exigence ou de la période de quarante-deux mois suivant la date de priorité, selon celle de ces périodes qui se termine la dernière.

(6) For the purposes of subsection (2), "international filing date" means the date accorded to an international application by a receiving Office pursuant to Article 11 of the Patent Cooperation Treaty.

(6) Pour l'application du paragraphe (2), « date du dépôt international » s'entend de la date accordée par l'office récepteur à la demande internationale en conformité avec l'article 11 du Traité de coopération en matière de brevets.

(7) Subsection 26(1) does not apply in respect of the times specified in subsection (3).

(7) Le paragraphe 26(1) ne s'applique pas aux délais prévus au paragraphe (3).

(8) Article 48(2) of the Patent Cooperation Treaty does not apply in respect of the times specified in subsection (3) of this section or in respect of any time limit applicable to a PCT national phase application.

(8) L'article 48(2) du Traité de coopération en matière de brevets ne s'applique pas aux délais prévus au paragraphe (3) du présent article ni aux délais applicables à l'égard d'une demande PCT à la phase nationale.

(9) An international application may not become a PCT national phase application where:

(*a*) before April 1, 2002, the 32-month period after the priority date has expired;

(*b*) the applicant had not complied with the requirements of subsection (1) and, where applicable, subsection (2) before the expiry of that period; and

(*c*) an election of Canada was not made before the expiry of the nineteenth month after the priority date.

(10) Once an international application becomes a PCT national phase application, it may not become a further PCT national phase application unless the earlier PCT national phase application has been withdrawn.

SOR/99-291, s. 5; SOR/2002-120, s. 1; SOR/2007-90, s. 10.

(9) La demande internationale ne peut devenir une demande PCT à la phase nationale si :

a) une période de trente-deux mois suivant la date de priorité s'est écoulée avant le 1er avril 2002;

b) le demandeur ne s'est pas conformé aux exigences du paragraphe (1) et, s'il y a lieu, du paragraphe (2) avant l'expiration de cette période;

c) l'élection du Canada n'a pas été faite avant l'expiration du dix-neuvième mois suivant la date de priorité.

(10) Dès qu'une demande internationale devient une demande PCT à la phase nationale, elle ne peut devenir une nouvelle demande PCT à la phase nationale que si la première demande PCT à la phase nationale est retirée.

DORS/99-291, art. 5; DORS/2002-120, art. 1; DORS/2007-90, art. 10.

APPLICATION OF CANADIAN LEGISLATION

59. When an international application becomes a PCT national phase application, the application shall thereafter be deemed to be an application filed in Canada and the Act and these Rules shall thereafter apply in respect of that application.

APPLICATION DE LA LÉGISLATION CANADIENNE

59. Lorsqu'une demande internationale devient une demande PCT à la phase nationale, elle est dès lors réputée être une demande déposée au Canada et assujettie à la Loi et aux présentes règles.

59.1 For greater certainty, for the purpose of section 8 of the Act, an international application is deemed to be an instrument of record in the Patent Office only when it becomes a PCT national phase application.

SOR/99-291, s. 6.

59.1 Il est entendu que, pour l'application de l'article 8 de la Loi, une demande internationale n'est réputée être un document en dépôt au Bureau des brevets que lorsqu'elle devient une demande PCT à la phase nationale.

DORS/99-291, art. 6.

59.2 (1) For greater certainty, in respect of an international application that has become a PCT national phase application, for the purposes of the Act and these Rules,

(*a*) information or notices included in the international application as filed shall be considered to have been received by the Commissioner on the filing date accorded to the application by a receiving Office pursuant to Article 11 of the Patent Cooperation Treaty; and

(*b*) information or notices furnished in accordance with the requirements of the Patent Cooperation

59.2 (1) Il est entendu que, dans le cas d'une demande internationale qui est devenue une demande PCT à la phase nationale, pour l'application de la Loi et des présentes règles :

a) les renseignements ou les avis inclus dans la demande internationale telle qu'elle est déposée sont réputés avoir été reçus par le commissaire à la date de dépôt accordée à la demande par un office récepteur en conformité avec l'article 11 du Traité de coopération en matière de brevets;

b) les renseignements ou les avis fournis en conformité avec les exigences du Traité de coopération en