

CANADIAN PATENT PRACTICE 2009

NON-STATUTORY SUBJECT MATTER

1. Living matter

Uni-cellular life forms which are new, useful and inventive are patentable.

Higher life forms (animals, plants, seeds and mushrooms) are not patentable subject matter. However, a process for producing higher life form may be patentable provided the process requires significant technical intervention by man and is not essentially a natural biological process which occurs according to the laws of nature.

2. Medical treatment

A method or process of surgery or therapy on living humans or animals is not patentable.

Methods of diagnosing a physical disease or physical medical condition in a human being, provided that the methods do not contain any step of surgery or therapy, may be patentable.

In Canadian patent practice, method of medical treatment claims are converted to German-style and Swiss-style use claims, which are patentable.

3. Scientific principle or abstract theorem

Mere scientific principles, abstract theorems, mathematical formulae and algorithms are not patentable.

4. Computer implemented inventions

Claims consisting solely of code listings are not patentable.

5. Games

A method for playing a game with a gaming apparatus or article is only patentable when the apparatus or article is new and inventive, or the apparatus or article is being used for a new and non-analogous use.

6. Business Methods

Business methods, *per se*, are not patentable in Canada. However, hardware that incorporates such methods is patentable. Furthermore, Canadian jurisprudence is evolving regarding the permissibility of business methods. A key Federal Court decision is anticipated in late 2009 or early 2010.