

Key differences between Canadian & US patent practice

Item	US	Canada
Inventor	First to invent	First to file
Disclosure Requirements	Duty to disclose voluntarily all known material prior art to USPTO.	No obligation to disclose voluntarily all known material prior art to the Canadian Patent Office, unless requisitioned.
Examination	Examination commences automatically.	Examination must be requested along with a government fee. Examination may be deferred for up to five years from the Canadian filing date.
Prosecution History Estoppel	Prosecution history of a patent application <u>can</u> be used in construing the claims of a patent.	Prosecution history of a patent application <u>cannot</u> be used in construing the claims of a patent.
Continuation Practice	A continuation/CIP application claims internal priority from a parent application at any time up to the date of issue of the parent application.	Any continuation or CIP-type application is only entitled to internal priority if filed within one year of the earlier of the filing date of the earliest parent application and the priority filing date. Any public disclosure by the applicant made more than one year prior to filing the continuation or CIP-type application is considered prior art.
Novelty provisions		
<ul style="list-style-type: none"> 1-year grace period 	U.S. 1-year grace period applies to all public disclosures (by applicant or other party). 1 year grace period begins when disclosure occurs in the U.S.	Canadian 1-year grace period applies to public disclosure by the applicant. 1 year grace period begins when disclosure by applicant occurs anywhere in the world. Application must be filed at <u>Canadian Patent Office</u> no later than 1 year after disclosure. Priority claim <u>does not</u> extend grace period.
<ul style="list-style-type: none"> On-sale bar 	On-sale bar.	No on-sale bar. 1-year grace period begins if sale offer is an enabling disclosure (i.e. product can be reversed-engineered to disclose subject matter of application).
Maintenance Fees	Maintenance fees due only three times during the life of a U.S. patent.	Canadian maintenance fees are due annually, beginning on the second anniversary of the Canadian filing date until the nineteenth anniversary.
Terminal Disclaimer	T.D. used to overcome double-patenting objection	No terminal disclaimer cure for double-patenting. Claims must be amended to avoid overlap.
Entity Status	Small entity: an entity that employs 500 or fewer employees. Small entity status does not apply to an entity that is controlled directly or indirectly by an entity with more than 500 employees.	Small entity: an entity that employs 50 or fewer employees, or a university. Small entity status does not apply to an entity that is controlled directly or indirectly by an entity with more than 50 employees, other than a university.
Non-Statutory subject matter		
<ul style="list-style-type: none"> Living matter 	Human being not patentable	Uni-cellular life forms are patentable. Multi-cellular and higher life forms (animals, plants, seeds and mushrooms) are not patentable subject matter. A process for producing higher life form may be patentable provided the process requires significant technical intervention by man A method or process of surgery or therapy on living humans or animals is not patentable.
<ul style="list-style-type: none"> Medical treatment 	Method of medical treatment allowed	Business methods, per se, are not patentable in Canada. However, hardware that incorporates such methods is patentable.
<ul style="list-style-type: none"> Business Methods 	Business methods allowed	