

Extending the term of your Canadian patent is now possible

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On September 21, several provisions of the Canada-EU Comprehensive Economic and Trade Agreement Implementation Act came into effect in Canada. Among these provisions are some that introduce amendments to the Patent Act including the addition of a system of Certificates of Supplementary Protection ("CSP").

The granting of a CSP is intended in part to compensate for the time spent in research and obtaining a marketing authorization for a drug containing a new medicinal ingredient or combination of medicinal ingredients. The duration of these proceedings may effectively jeopardize the actual enjoyment of the statutory protection inherent to a Canadian patent on that ingredient or combination of ingredients.

As a result, the new Canadian CSP regime provides an extension to the 20-year statutory patent term for a maximum of two years, starting from the expiry date of an eligible pharmaceutical patent.

The eligibility of a pharmaceutical patent for the CSP regime depends on the satisfaction of several requirements. One of these requirements is that the patent must contain at least one claim pertaining to a novel medicinal ingredient or combination of medicinal ingredients, to its use, or to a specific process by which it can be obtained. Under the new provisions, "new" means that no other marketing authorization has been granted for the same ingredient or combination of ingredients.

Given that only one CSP can be granted per medicinal ingredient while a number of patents may issue to protect various aspect of the same medicinal ingredient, the introduction of this new regime will have a strategic impact on patent drafting.