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September 14, 2009

Patrice Lemyre  
Director, Regulatory Affairs  
Canadian Intellectual Property Office  
50 Victoria Street  
Phase II, 4<sup>th</sup> Floor  
Gatineau, QC K1A 0C9

Dear Mr. Lemyre:

**RE: Consultation Document – Obtaining a Filing Date on Weekends and Holidays  
(24/7 Filing)**

On behalf of the National Intellectual Property Section of the Canadian Bar Association (CBA Section), I am pleased to provide our comments on the proposed changes in your Consultation Document published on June 1, 2009.

We applaud CIPO for continuing to seek out ways to improve services to clients. 24/7 filing may benefit some applicants in certain cases. However, we believe it may disadvantage many more applicants, particularly Canadian applicants, and create additional burdens for CIPO, intellectual property practitioners and applicants.

**Benefits to Applicants**

There are occasions when the rights of two competing applicants are determined by their respective filing dates. In the patent and industrial design fields, the last day of a statutory time bar may also fall on a weekend or holiday, so 24/7 filing would extend the opportunity to make a valid filing that otherwise had to be made on the previous business day. However an applicant not already aware of critical timing issues is unlikely to discover them on a weekend or holiday, and even less likely to be able to file an application that qualifies for a filing date, much less one that captures what is important or valuable about the invention or design. The value of 24/7 filing in such situations is in fact very limited.

**Detriment to Canadian Applicants**

Our principal concern is the detrimental effect of a 24/7 filing system on competing Canadian applicants. Most nations in the world, and most developed countries, are in time zones 5 to 18 hours ahead of any Canadian time zone. Applicants in those jurisdictions start their business day many hours ahead of Canadian applicants. Therefore, they may file during their business hours but receive a filing date in Canada on a preceding Sunday or holiday, when Canadian offices have not yet opened for business. This puts Canadian applicants at a competitive disadvantage.

Further, large, sophisticated intellectual property owners would be in the best position to take advantage of 24/7 filing. While there are certainly some such entities in Canada, there are far more in other countries. Smaller Canadian businesses and individuals, particularly self-filers and small businesses, will feel the effect most acutely.

### **Maintenance and Support – Burden and Consequences of Failure**

For 24/7 filing to be effective, an electronic filing system must be dependably available at all times. It is our understanding that 24/7 filing would require CIPO to increase its maintenance and support resources significantly, requiring greater funding or diversion of funding from other areas. Absent such increased commitment, applicants will be exposed to the risk that they cannot make filings and obtain filing dates. This will inevitably lead to complaints and possibly draw CIPO into litigation over the issue of an applicant's entitlement to a particular filing date.

### **Costs to Users and Impact on Overall Usage**

Intellectual property practitioners may feel obliged to have staff available on a 24/7 basis to respond to requests for filings. This burden will fall disproportionately on sole practitioners and small firms.

Moreover, if increased costs are passed on by practitioners to applicants, this may cause some applicants to forego filing or make fewer filings, reducing usage of CIPO's filing systems.

### **Practitioners' Experience – Domestic and Foreign**

In our experience, there is essentially no client demand for effecting filing and obtaining dates on weekends and holidays. We have made inquiries of our contacts in other countries, particularly the United States, the United Kingdom and Australia, to learn of their experience. This information is admittedly anecdotal. Nevertheless, a clear majority of the foreign practitioners we canvassed have not identified any demand by their clients for filings on weekends and holidays. Such filings are relatively rare, and usually for the practitioners' convenience only (i.e. practitioners filed on weekends because it suited their work schedule and workload).

### **Impetus for Change**

If the impetus for the proposed change is to increase the usage of electronic filing, we question whether it will have the desired effect. Increased usage of electronic filing is a valid objective. The CBA Section has a variety of suggestions in that regard. While itemizing the particular issues which appertain to the systems for patents, trade-marks, copyright, industrial designs and other properties would take more space than is appropriate in this letter, we would be pleased to discuss them with CIPO at your convenience. Enhancement of CIPO's existing systems would encourage greater use of on-line filing and is a necessary precursor before embarking upon 24/7 filing.

We would appreciate the opportunity for further dialogue before any implementation of 24/7 filing.

Yours very truly,

*(Original signed by Kerri Froc for Alexandra Steele)*

Alexandra Steele  
Chair, National Intellectual Property Section