



RIGHT TO FILE A PATENT APPLICATION

Here are some of the criteria allowing a company or a person to file a patent application on an invention:

- The patent application must be filed in the name of an inventor, or in the name of a company or another person to whom the inventor has assigned his rights or is under legal obligation to do so. An inventor must be a physical person. More than one inventor and more than one applicant may be named in a patent application.
- The invention must not have been disclosed in a prior patent application in the country in which the patent application is being filed, except in certain situations.
- The invention must not have been publicly disclosed by a third party before the filing date of the patent application.
- The invention must not have been publicly disclosed by the applicant before the filing date of the patent application. However, there exists an exception to this rule: in Canada and in the United States, there is a one (1) year grace period after a first public disclosure of the invention by the applicant (or a third party having obtained information on the invention from him) to validly file a patent application on the invention.

Note that the definition of "public disclosure" varies from one country to the next. In a given country, it could be verbal or printed, and could include for example an advertisement, a sale or even a simple offer for sale, a showing of the product in a fair or tradeshow, displaying the product on a web site, and sometimes even a verbal description of the invention between two individuals in a non-confidential manner.

The most prudent way to proceed is usually to avoid any public disclosure of the invention before filing a patent application on it.

Please contact us immediately if you believe that one or more of the above-mentioned situations could compromise your right to file a patent application on your invention. There also exist certain exceptions to these situations that could apply in your case and other criteria that have not been mentioned herein that govern the patentability of an invention, among other things.

LESPÉRANCE & MARTINEAU