

UNDERSTANDING CANADIAN PATENT LAW: AN OVERVIEW

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1. INTRODUCTION TO CANADIAN PATENT LAW

Overview of Patent Eligibility in Canadian Law: Canadian Patent Law grants inventors exclusive rights to make, use, or sell inventions, preventing unauthorized exploitation and encouraging innovation by protecting technological advancements.

2. THE LEGISLATIVE AND REGULATORY FRAMEWORK

1

THE PATENT ACT AS THE FOUNDATION OF CANADIAN PATENT LAW

The Patent Act forms the core of Canadian patent law, defining patentable subject matter and patentability requirements to ensure legal clarity and innovation protection.

2

DEFINING PATENTABLE SUBJECT MATTER

The Act clearly defines eligible inventions and legal boundaries for patents, promoting research and development by safeguarding innovation eligibility.

3

PATENT RULES

The Manual of Patent Office Practice (MOPOP), although not legally binding, acts as a compliment to the Patent Act. Patents last for twenty years (20) from the date the patent application was filed.

3. KEY PATENTABILITY REQUIREMENTS

PROPER SUBJECT MATTER ELIGIBILITY

Inventions must belong to eligible categories under the Patent Act to qualify for patent protection.

NOVELTY

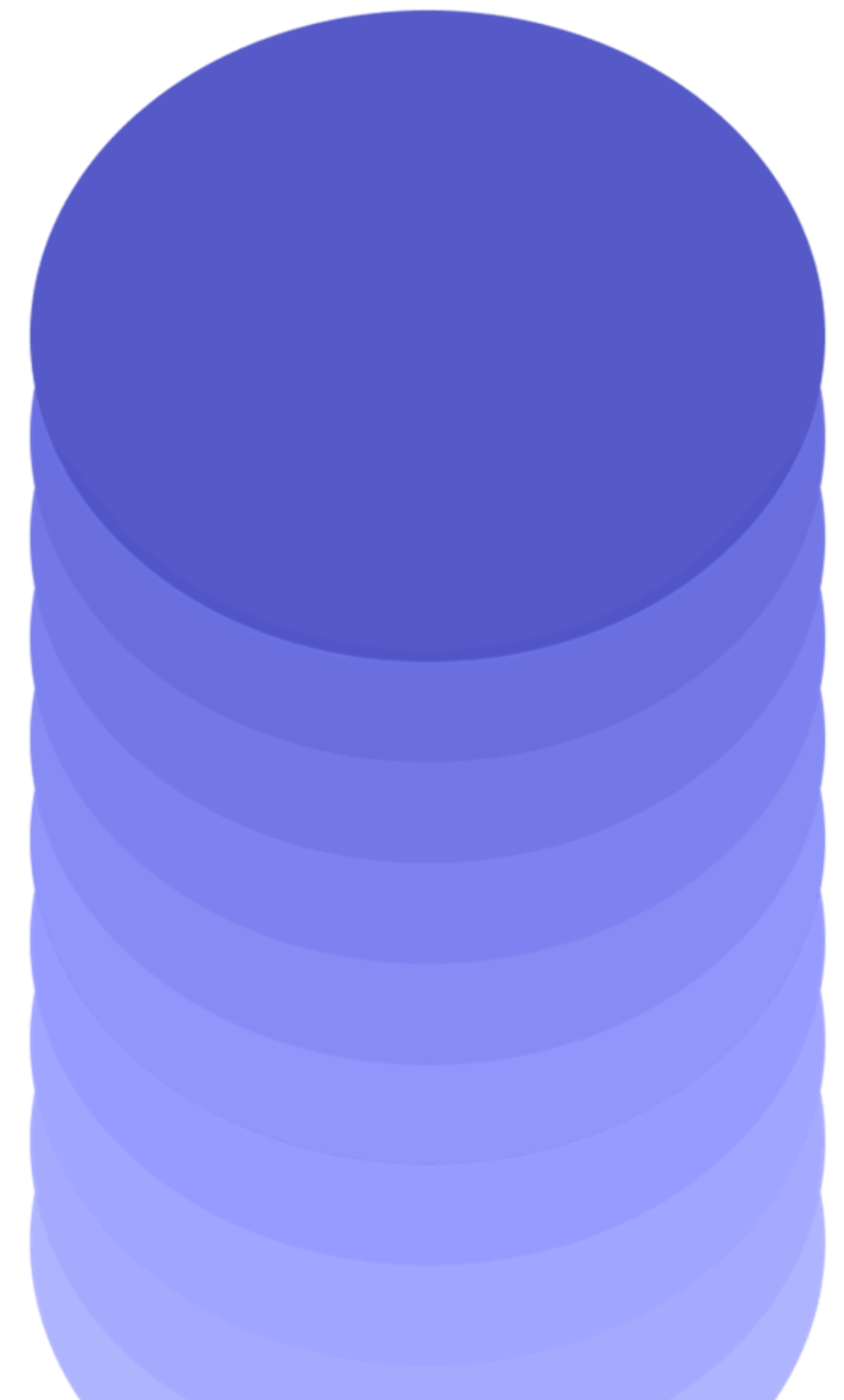
Inventions must be new and not previously disclosed to the public to ensure genuine innovation.

UTILITY

Inventions must demonstrate practical utility by effectively performing their intended function.

NON-OBVIOUSNESS:

Inventions must show an inventive step that is not obvious to a skilled person in the field.





4. PATENTABLE SUBJECT MATTER CATEGORIES IN CANADA

Canadian patent law defines eligible subject matter as new and useful arts, machines, processes, manufactures, and compositions of matter, each with specific criteria for patentability.

5. UNDERSTANDING “ART” AND “PROCESS”

1

DEFINITION OF ART IN PATENT CONTEXT

Art broadly refers to methods and processes that produce specific results relevant to patentable subject matter in Canada.

2

UNDERSTANDING PROCESS AND ITS IMPORTANCE

A Process involves a series of defined steps applied to materials, causing transformation essential for patent clarity.

6. THE “MACHINE” CATEGORY

DEFINITION OF MACHINE CATEGORY

The 'Machine' category includes physical devices designed to perform specific functions or operations.

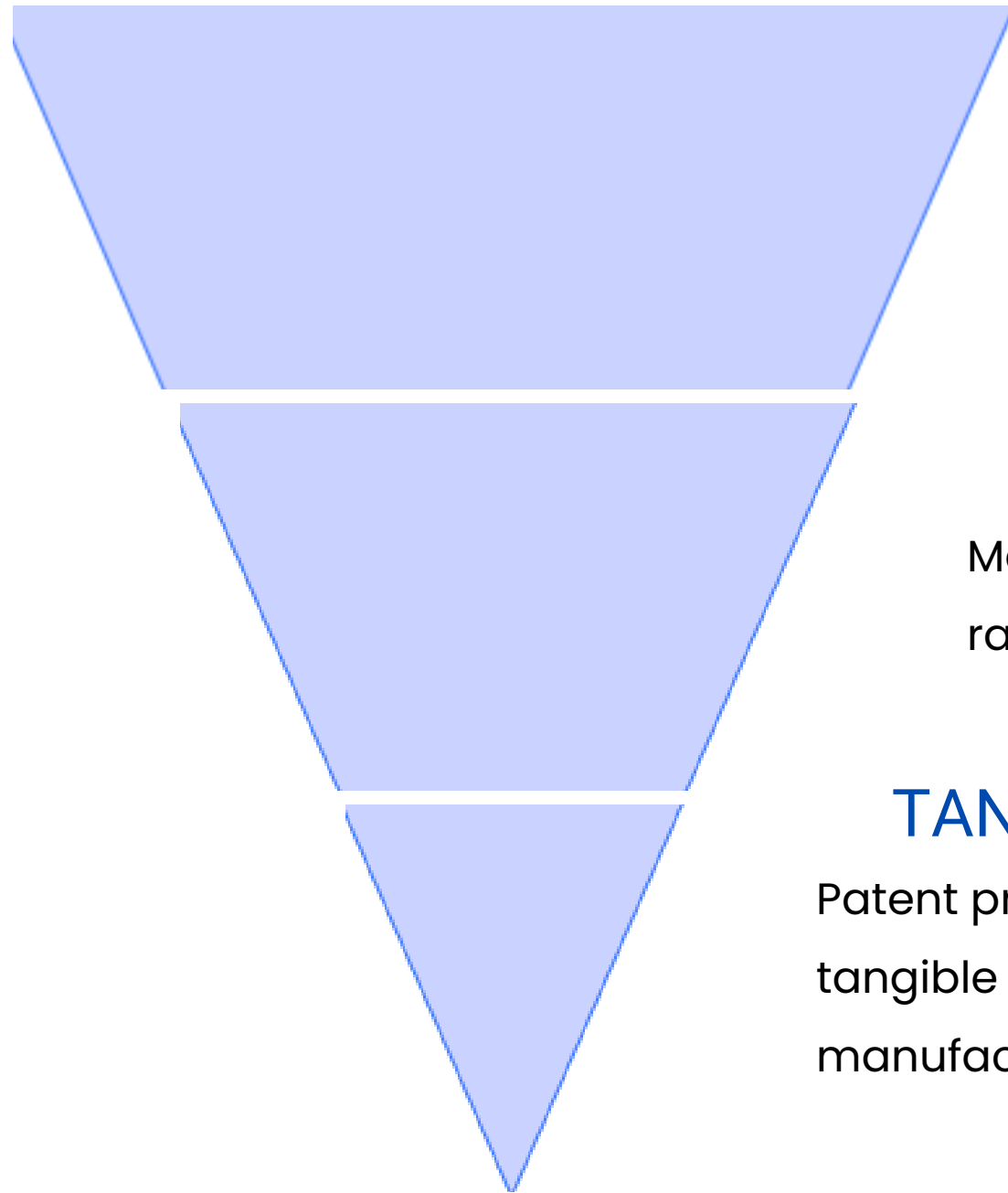
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2

PATENTABILITY CRITERIA FOR MACHINES

Machines must meet novelty, non-obviousness, and utility requirements to be patentable under Canadian law.

7. THE “MANUFACTURE” CATEGORY



DEFINITION OF MANUFACTURE

This category includes products made by altering the character or condition of material objects, resulting in tangible goods.

PROCESSES OF MANUFACTURING

Manufacturing involves fabrication, assembly, or transformation of raw materials to create new forms.

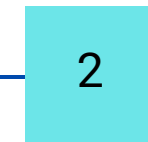
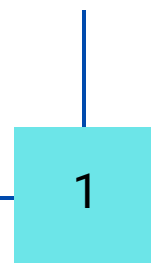
TANGIBILITY REQUIREMENT

Patent protection requires significant transformation of tangible goods, emphasizing practical innovation in manufacturing.

8. THE “COMPOSITION OF MATTER” CATEGORY

UNIQUE COMBINATIONS FORMING DISTINCT ENTITIES

In Canadian patent law, compositions of matter involve combining substances to create distinct entities that are more than the sum of their parts.



REQUIREMENT OF SYNERGISTIC EFFECT

Patentability requires a synergistic effect where combined substances exhibit enhanced properties beyond mere additive effects, reflecting inventive contribution.

9. IMPROVEMENTS — ARE THEY PATENTABLE?

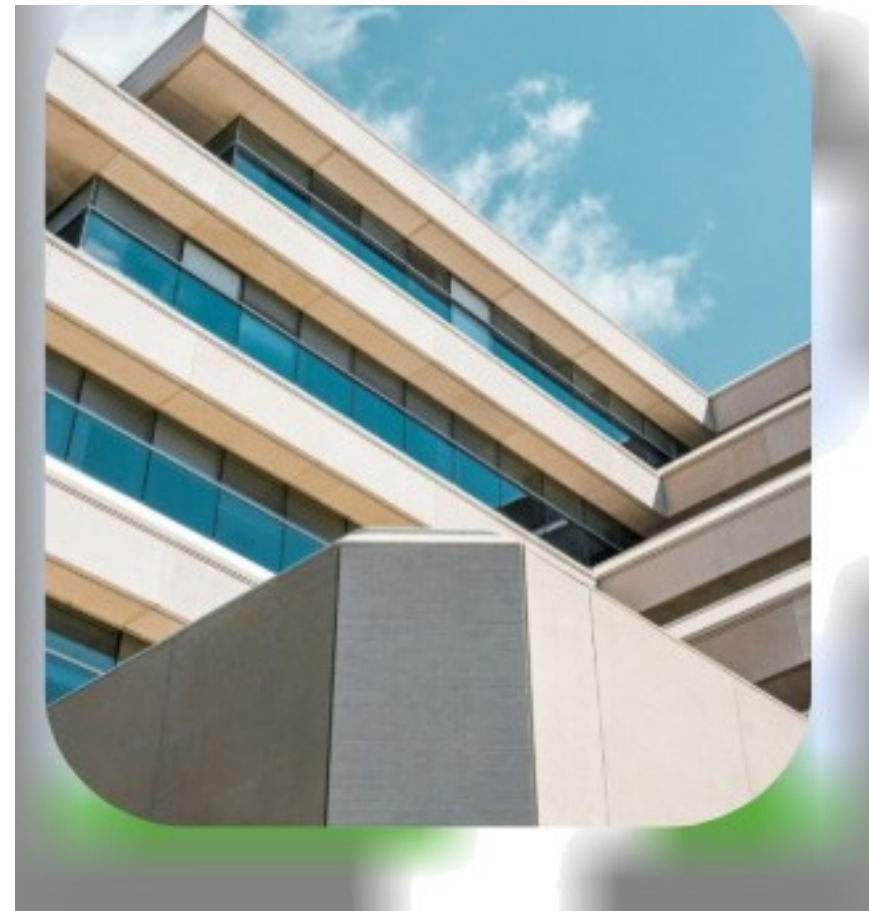
A MAJORITY OF PATENTS ARE IMPROVEMENTS

Most patents worldwide focus
on enhancing existing invention



CORE PATENTABILITY REQUIREMENTS

Improvements must meet
novelty, non-obviousness and
utility criteria



INDEPENDENTLY SATISFY REQUIREMENTS

Every improvement must
independently fulfill all
patentability criteria



IMPORTANCE OF INNOVATION

Continuous innovation drives
the need for improvements in
technology and processes



10. UNPATENTABLE SUBJECT MATTER IN CANADA

1

EXCLUSIONS OF SCIENTIFIC PRINCIPLES AND MERE IDEAS

Canadian patent law excludes scientific principles and mere ideas as they are considered discoveries or lack concrete utility, ensuring protection only for practical inventions.

2

EXCLUSION OF HIGHER LIFE FORMS

Higher life forms, including animals and plants, are excluded from patent protection, as affirmed by judicial rulings such as Havard College.

3

ROLE OF JUDICIAL INTERPRETATION

Court decisions refine and clarify patent exclusions, shaping the application of law to abstract concepts and excluded categories beyond statutory text.

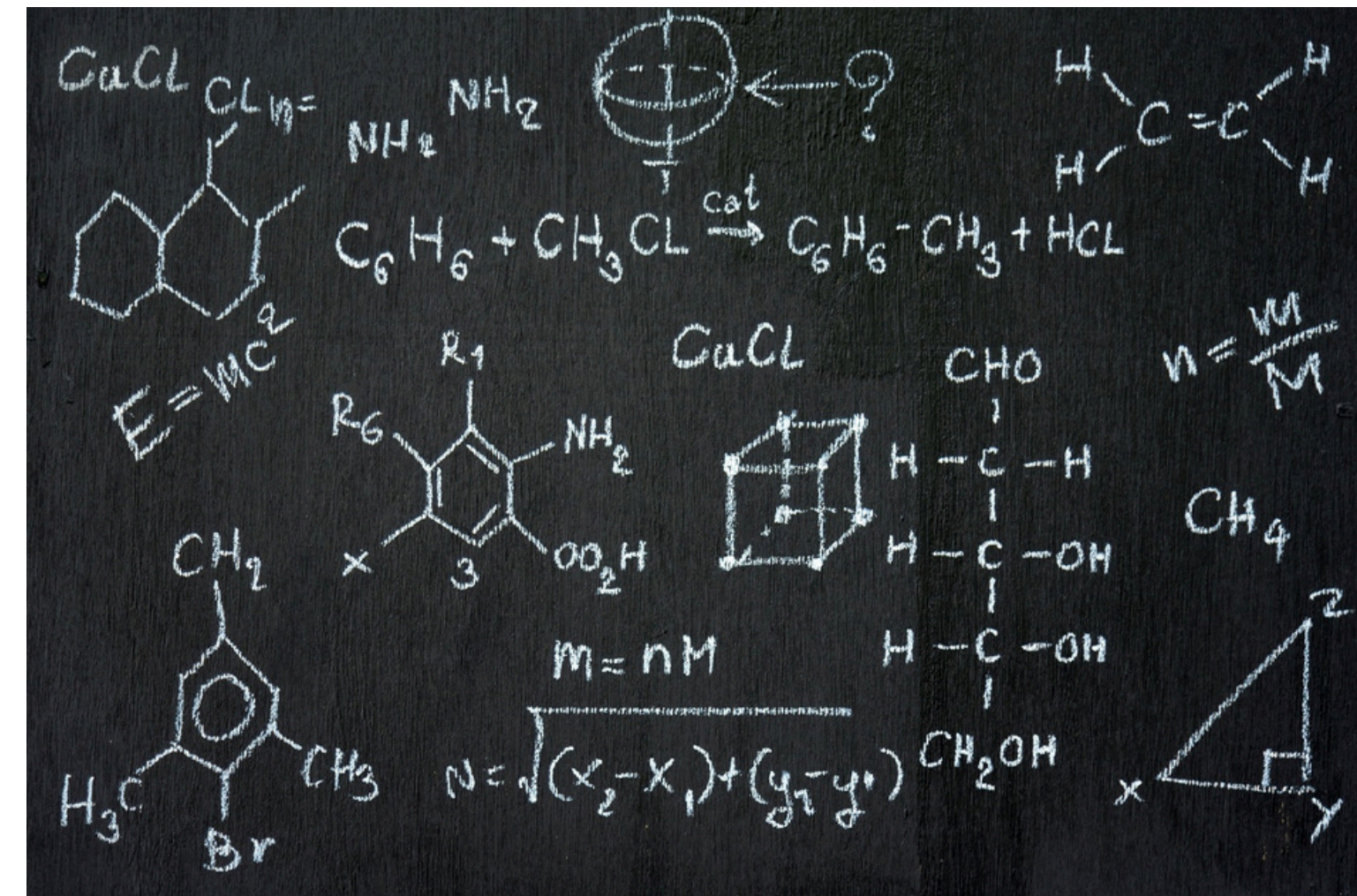
11. IMPLICATIONS OF PATENTABILITY EXCLUSIONS

PATENTS PROTECT APPLICATIONS, NOT KNOWLEDGE

Patents safeguard the practical implementation of innovations, ensuring that underlying ideas remain publicly accessible.

JUDICIAL EXCLUSIONS OF ABSTRACT THEOREMS

Courts exclude abstract theorems from patent protection, emphasizing patents must cover inventions with practical utility.



12. PATENTABILITY OF COMPUTER PROGRAMS AND BUSINESS METHODS

ABSTRACT NATURE OF COMPUTER PROGRAMS

In Canada, computer programs are generally considered abstract ideas and are not patentable under patent law.

1

2

PATENTABILITY LINKED TO USEFUL PROCESSES

A computer program or business method can be patented if it is tied to a new and useful process or apparatus, demonstrating practical utility or a physical change.

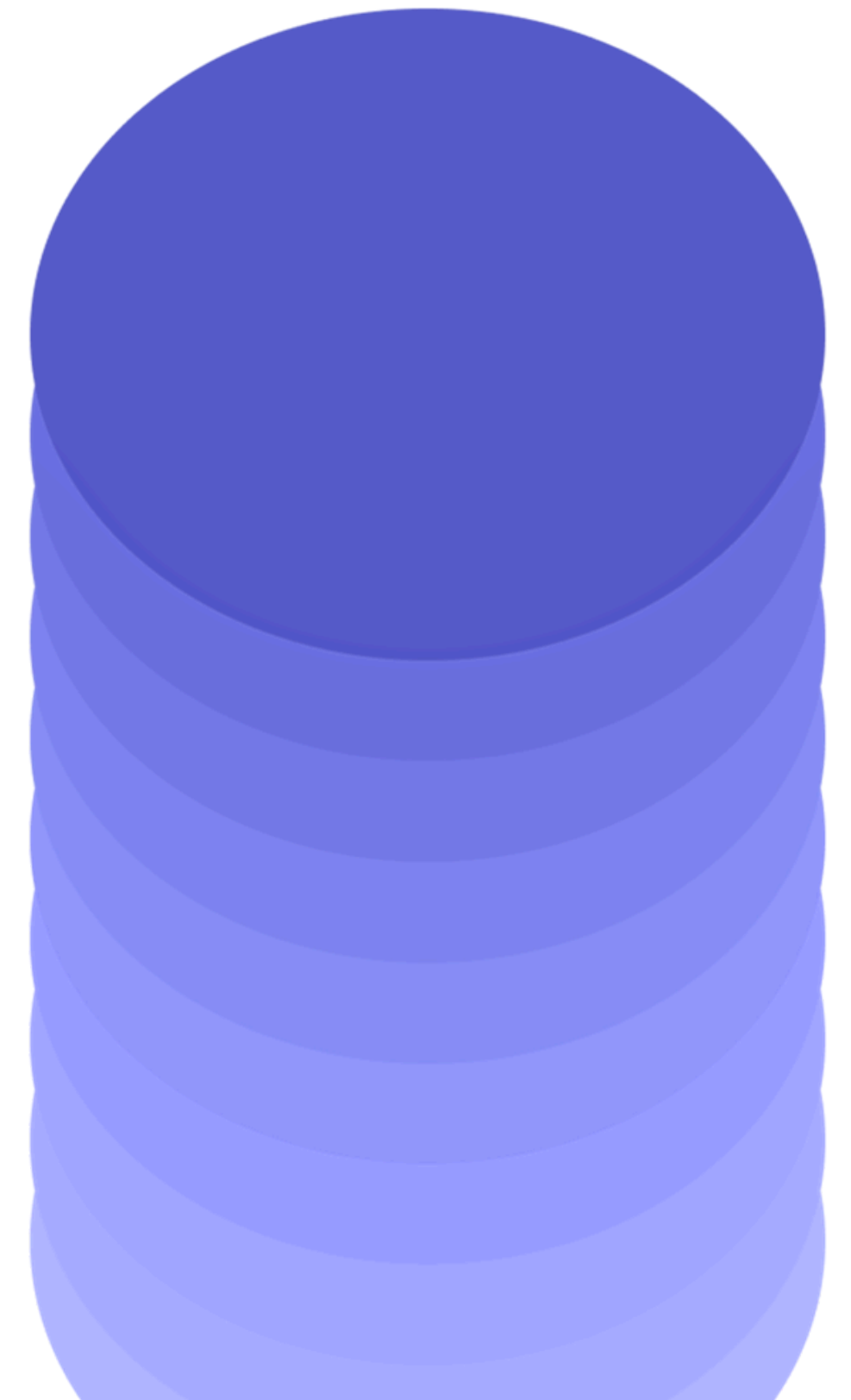
13. STATUTORY BASIS FOR NOVELTY IN CANADIAN PATENT LAW

NOVELTY REQUIREMENT UNDER SECTION 28.2(1)

Section 28.2(1) of the Canadian Patent Act defines novelty, requiring inventions to be truly new and not previously disclosed to qualify for patent protection.

DEFINITION OF PRIOR ART

Prior art encompasses all prior public disclosures of an invention, preventing patenting if the invention was publicly available before the filing date. A grace period of one year exists for the inventor to file the patent after disclosure.



14. PUBLIC DISCLOSURE AND THE GRACE PERIOD

1 ONE-YEAR GRACE PERIOD FOR PUBLIC DISCLOSURE

Canadian Patent Law grants inventors a one-year grace period to publicly disclose inventions without losing patent rights, allowing filing within this timeframe.

2 MANAGING INVENTION DISCLOSURES

The grace period enables inventors to explore commercial opportunities while protecting rights, emphasizing timely patent application filing within one year.

15. DOCTRINE OF ANTICIPATION AND PRIOR ART

DEFINITION AND ROLE OF ANTICIPATION

Anticipation in Canadian patent law means a prior disclosure or patent revealed all essential elements of an invention, making it not novel.

1

2

PRIOR ART MUST DISCLOSE ESSENTIAL ELEMENTS

The prior art must have disclosed the essential elements and enable a skilled person to recreate the invention without undue experimentation.

16. UNDERSTANDING NON-OBVIOUSNESS (INVENTIVE STEP)

1

DEFINITION OF NON-OBVIOUSNESS

Non-obviousness requires that an invention is not immediately evident to experts at the time of filing, ensuring patentability.

2

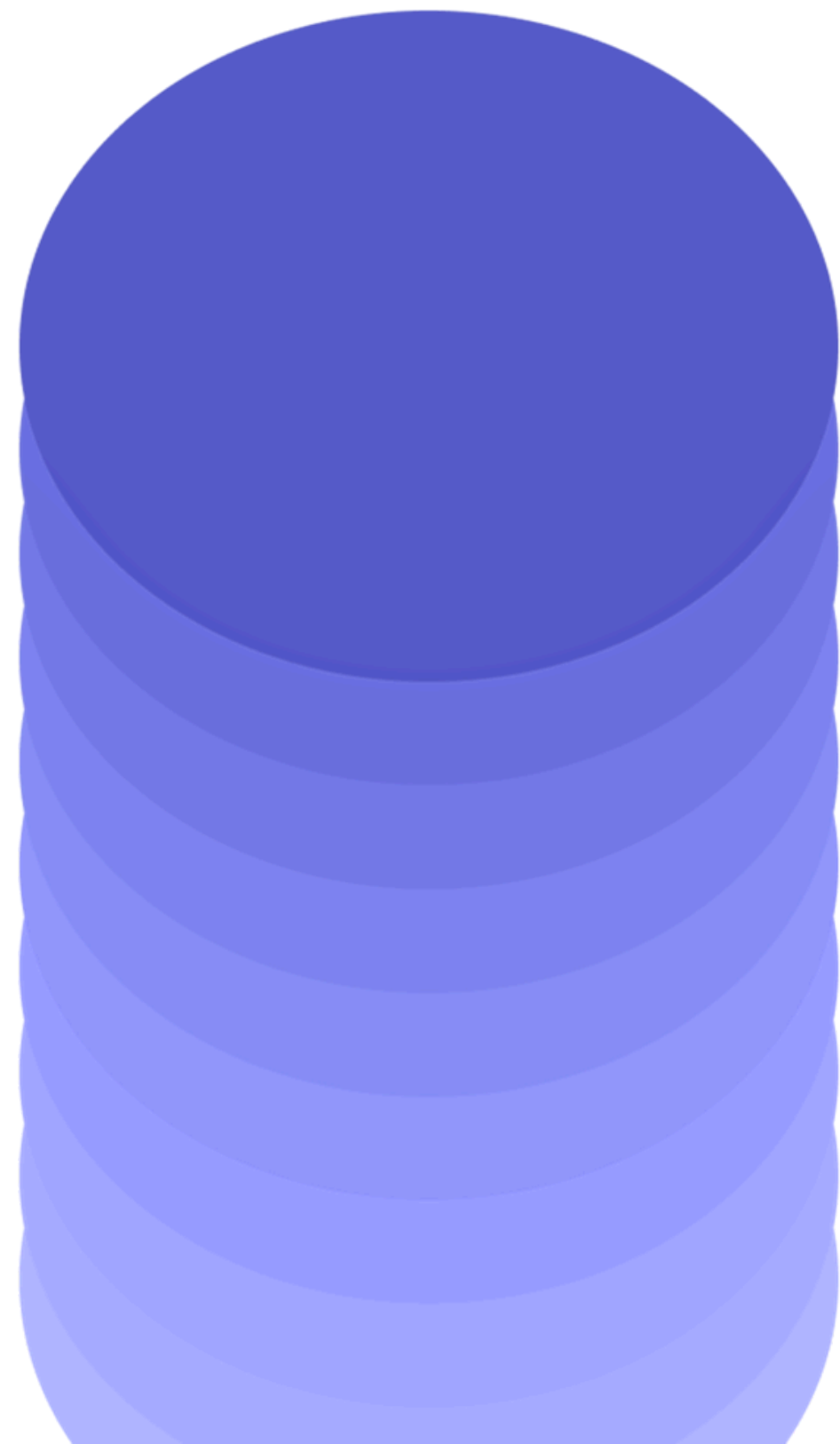
IMPORTANCE OF INVENTIVE STEP

The inventive step ensures patents protect genuine innovations, promoting true technological and industrial progress.

3

ASSESSMENT CRITERIA FOR INVENTIVE STEP

Patent examiners evaluate differences from prior art considering the knowledge of skilled persons in the relevant field.



17. UTILITY REQUIREMENT FOR PATENT ELIGIBILITY

SECTION 2 MANDATES FUNCTIONAL UTILITY

Section 2 of the Patent Act requires inventions to demonstrate functional utility to qualify for patent protection.

INVENTIONS MUST DEMONSTRATE FUNCTIONALITY

Inventions must effectively perform their intended function and provide practical benefits to be patent eligible.

18. ENABLEMENT AND SUFFICIENCY OF DISCLOSURE

1

ENABLEMENT REQUIREMENT IN CANADIAN PATENTS

A patent application must describe the invention so a skilled person can practice it without undue experimentation, ensuring full public disclosure in exchange for exclusive rights.

2

IMPORTANCE OF CLEAR AND COMPLETE DISCLOSURE

Sufficient disclosure provides clarity on how to make and use the invention, supporting examination and enforceability of the patent.

19. THE PATENT APPLICATION PROCESS IN CANADA



KEY STEPS IN THE CANADIAN PATENT APPLICATION PROCESS

The process includes filing the application, formal examination for patentability, publication of the application, and final grant of the patent rights.

ROLE OF THE MANUAL OF PATENT OFFICE PRACTICE (MOPOP)

MOPOP provides authoritative, although not legally binding, procedural guidance to ensure consistent examination and clear standards throughout the patent prosecution process.

ENSURING COMPLIANCE AND SUCCESSFUL PATENT GRANTS

Applicants must disclose invention details accurately and follow Canadian Intellectual Property Office (CIPO) guidelines.

20. FEES ASSOCIATED WITH CANADIAN PATENTS

1 FILING, EXAMINATION, AND MAINTENANCE FEES OVERVIEW

Canadian patent fees include filing fees to start the application, examination fees for patentability review, and maintenance fees to keep patents active over time. Application fees range from \$240 CAD to \$595 CAD depending on the size of your business.

2 IMPORTANCE OF FEE MANAGEMENT

Proper management of these fees is crucial for inventors and companies to budget effectively and maintain patent rights throughout the patent lifecycle. Patent management fees must be paid yearly on the date of the anniversary, and range significantly across the lifetime of the patent.

21. ROLE AND SIGNIFICANCE OF MOPOP

MOPOP AS A PUBLISHED GUIDE

MOPOP serves as the primary procedural guide for patent examiners and applicants, ensuring clear instructions on patent prosecution.

ENSURES CONSISTENCY IN PATENT

PROSECUTION

MOPOP provides standardized interpretations to promote uniformity and predictability in the examination process across the Canadian patent system.

22. PATENT PROTECTION AND ENFORCEMENT

EXCLUSIVE RIGHTS GRANTED BY PATENTS

Patents in Canada provide inventors exclusive rights to make, use, or sell their inventions, preventing unauthorized use and encouraging innovation.

LEGAL REMEDIES FOR PATENT INFRINGEMENT

Patent holders can enforce their rights through legal actions against infringement, ensuring protection and respect for proprietary technologies.

23. SUMMARY AND KEY TAKEAWAYS

OVERVIEW OF PATENT ELIGIBILITY AND REQUIREMENTS

Canadian patent law requires inventions to fall into specific categories and demonstrate novelty, utility, and non-obviousness to qualify for protection.

EXCLUSIONS AND LEGAL FRAMEWORK

Certain subject matter like scientific principles, higher life forms, and abstract ideas are excluded, with the Patent Act and case law guiding patentability standards.

24. HELPFUL LINKS

Patent Fees/Maintenance:

<https://ised-isde.canada.ca/site/canadian-intellectual-property-office/en/patents/patent-fees>

Canadian Patent Information:

<https://ised-isde.canada.ca/site/canadian-intellectual-property-office/en/patents>

Elevate IP Learning Hub:

<https://elevateip-learninghub.communitech.ca/>

College of Patent Agents and Trademark Agents (Includes a Directory of Patent Agents):

<https://cpata-cabamc.ca/en/>

Ade & Company Patent Agents:

<https://www.adeco.com/>

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25. ACKNOWLEDGMENTS

The University of Manitoba campuses and research spaces are located on original lands of Anishinaabeg, Ininiwak, Anisininewuk, Dakota Oyate, Dene and Inuit, and on the National Homeland of the Red River Métis.

We respect the Treaties that were made on these territories, we acknowledge the harms and mistakes of the past, and we dedicate ourselves to move forward in partnership with Indigenous communities in a spirit of Reconciliation and collaboration.

Acknowledgement

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THANK YOU



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