

FIRST FILING

A first draft or preliminary application is generally filed to establish a date of invention as early as possible after an invention is made. These preliminary applications are often incomplete and informal and are used to establish the priority for a formal application to be filed within twelve months following this first filing. The formal application often contains new details not disclosed in the preliminary application, but nonetheless claims the priority of the first application for all the matter contained in the first application. In **Canada**, a preliminary application is filed under the **Patent Rule #93** and is referred to as a **partial application**. In the **USA** a preliminary application is filed under **Section 35 U.S.C. 111 (b) of the Patent Laws**, and is referred to as a **provisional application**. Although a preliminary application establishes a first date of invention, there are other rules to comply with to preserve the novelty of the invention until the filing of a formal application can be made.

The following rules should be considered before filing a first application in Canada or in the USA. These rules are applicable to actions made by the applicant, or by a person who obtained knowledge of the invention directly or indirectly, from the applicant.

In the case of a formal application filed in Canada claiming priority on a partial application filed **in Canada** or on a provisional application filed in the USA; the subject-matter defined by a claim in the formal application for a patent in Canada **must not have been disclosed more than twelve months before the actual filing date of the formal application**, in such a manner that the subject-matter became available to the public in Canada and elsewhere.

In the case of a formal application filed in the USA claiming priority on a partial application filed in Canada; no patent shall be granted on any application for patent in the USA for an invention which had been **described in a printed publication in any country** or in public use or on sale in the USA for more than twelve months prior to the actual filing date of the formal application in the USA.

In the case of a formal application filed in the USA claiming priority on a provisional application filed in the USA; the formal application has the same effect as if it had been filed on the date of the provisional application. Therefore, no disclosure in a printed publication in any country, or no public use or sale in the USA shall had been made for more than twelve months prior to the filing date of the provisional application in the USA.

Therefore, when it is not possible to prepare a formal application for patent within one year following a first public disclosure of the invention, a provisional application should be filed in the USA within these twelve months at least to preserve the novelty of the invention in the USA.

NOTE: Source, date, and accuracy of the above information is unknown.