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PATENT LAW FOR NON-IP LAWYERS:
WHAT TO DO WHEN YOUR CLIENT SAYS “EUREKA”

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I. WHAT IS A PATENT?

A patent grants the exclusive right to make, use or sell an invention from the day the patent is granted to a maximum of 20 years after the day on which the patent application is filed.

An invention is "any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter."\(^1\) For example, an invention may be:

- a rain jacket (a manufacture);
- a water repellant coating applied to rain jackets (a composition);
- a 3D printer used to make a rain jacket (a machine);
- a method for making rain jackets (a process); or
- an improvement on any of these.

According to the Canadian Intellectual Property Office, over 90% of patents are for improvements to existing patents.\(^2\) The rights afforded by patents allow patent owners to recover their time, effort and costs in research and development, which encourages and rewards innovation. The monopoly afforded by a patent allows its owner to attract investment, which stimulates economic development.

In Canada, the regulation of patents falls under the federal Patent Act.\(^3\) An important component of filing a patent is public disclosure of the invention; all patent applications are open to public inspection 18 months from the date of filing.

**Patents vs Confidential Information/Trade Secrets**

The law of confidential information protects against the unauthorized disclosure or use of confidential information by those to whom the information was confidentially disclosed.\(^4\) Confidential information may be an invention, technical information, data, ideas, plans, designs, concepts, and other such information. Although there is no statutory definition of confidential information or trade secret, the law requires that protectable confidential information be generally unknown in the

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\(^1\) [*Patent Act*, RSC 1985, c P-4, s 2.]


\(^3\) [*Patent Act*, supra note 1.]