



# The Canadian Patent Examiner Continuous Training Program



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## ABSTRACT

The Canadian Intellectual Property Office (CIPO) is the Government of Canada organization responsible for granting patent rights. In 2009, the Patent Branch formalized the continuous training and professional development of patent examiners by creating the Patent Examiner Continuous Training Program. This paper presents an overview of the program: factors that influence training needs, categories of training offered, training providers, training medium used and also examples of recent training activities. CIPO's experience may be useful for other intellectual property offices developing a training program for their examiners.

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## 1. Introduction

Patent examiners, like patent searchers and patent agents, need both technical/scientific and legal expertise, which is a combination not often found among job applicants. Therefore, businesses and organizations often have to provide substantive training to enable a new employee to perform patent searches or examine patent applications [1–4].

In Canada, patent examiners work in the Patent Branch of the Canadian Intellectual Property Office (CIPO). CIPO is the government organization that administers the majority of the intellectual property laws in Canada. It is responsible for patents, trademarks, copyrights, industrial designs and industrial circuit topographies, along with other related activities such as outreach and communication [5]. Currently there are approximately 400 Canadian patent examiners, all of whom benefit from a qualification training program [6].

Patent examiners become fully trained and reach the “working level” two years after they have been hired. It is understood, however, that they will not perform exactly the same work for the remainder of their careers, and that they will require further training. As such, training will be continuously offered and needed. This is true for most jobs in the 21st century, but even more so for patent examiners because their work is rapidly evolving. On-going training of patent examiners is crucial if granted patents are to maintain a high quality, which ultimately has important economic effects [7,8].

The Treasury Board of Canada Secretariat has developed a *Policy on Learning, Training, and Development* for all of the federal

government public service. The policy covers different aspects of learning, and includes professional development; one of the expected results of the policy is that “employees at all levels will acquire and maintain the knowledge, skills and competencies related to their level and functions [9].” The policy sets a standard for the entire Canadian government as each department is responsible to adapt and integrate it into its business. It also sets responsibilities for all levels of the organization: management, supervisors, the training department, and, ultimately, the employees. In 2009, the Patent Branch of CIPO formalized the continuous training and professional development of patent examiners by creating the Patent Examiner Continuous Training Program.

This article will provide an overview of the Patent Examiner Continuous Training Program and will highlight what factors influence the need for patent examiners’ continuous training, how the training offer is organized, how training can be delivered and examples of recent training activities. It will conclude with a discussion on a few special topics.

## 2. Factors that influence patent examiners' training needs

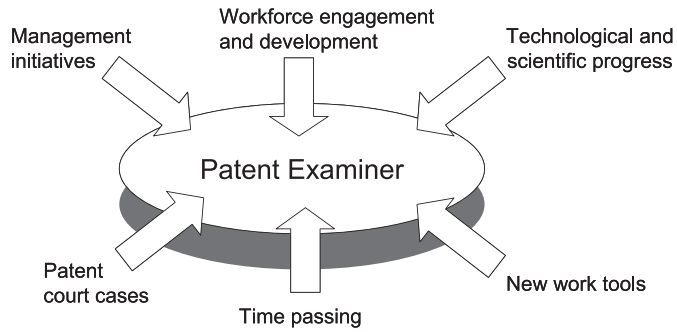
A variety of pressures can lead to a need for training for experienced patent examiners. The Patent Branch training head must monitor these pressures and take them into account when considering offering training to patent examiners. **Graphic 1** illustrates the different pressures.

### 2.1. Management initiatives

Patent examiners are Canadian public servants, and, as such, may attend training originating from the federal government.

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**Graphic 1.** pressures that generate training needs for patent examiners.

These training activities are varied in nature, and include workplace behavior training, such as preventing workplace harassment, to learning to use a new mandatory tool, such as a time reporting system [10].

CIPO's management may also launch initiatives which call for training. A recent example of such an activity was the drive to apply the LEAN methodology to processes within CIPO [11,12]. This resulted in training on the methodology itself, followed by training on the process changes brought about by the methodology.

## 2.2. Workforce engagement and development

One of the *CIPO Business Strategy 2012–2017* enabling pillars is “a highly skilled workforce [12].” All employees must be trained and have the skill set to perform their daily tasks and duties. In addition, those with the potential to be promoted and those who are interested in special projects should also be offered training to develop the knowledge and skills for them to expand their horizons, to the benefit of the organization.

The highly skilled workforce pillar also encompasses employee engagement [12]. CIPO wants employees to understand their role and the broad implications of their work in the Canadian intellectual property picture. Employees that are more engaged are usually more dedicated to their job, more concerned about quality, and less likely to leave [13]. For example, intellectual property awareness sessions have been offered to all CIPO employees, and, more specifically to patent examiners. Patent agents make regular presentations about various patent law proceedings and the effects of patents in the corporate world.

## 2.3. Technological and scientific progress

Examiners at CIPO are assigned patent applications in one or a few specific areas of technology, based on International Patent Classification (IPC) symbols [14]. Examiners must keep up with the technical evolution in their field of examination, be able to understand the technology disclosed in the patent application under their examination, and determine who is the person of ordinary skill in the art for that application and what is the common general knowledge of that person [15].

## 2.4. Patent court cases

Canadian patent law is based on common law. Patent examination is thus highly influenced by court decisions that set precedents and provide guidance on the application of the *Patent Act* and *Patent Rules*. Nonetheless, comments provided by judges are not meant directly for patent examiners, and often relate to the

specific facts of the case litigated. Therefore, CIPO must interpret court decisions and draw conclusions for its examination practice. This results in either an internal examination practice memo for all examiners (which is eventually incorporated into the next revision of the *Manual of Patent Office Practice* [16]) or, where a practice change is of immediate interest to CIPO's clients, a patent notice will be published on CIPO's website [17]. Since the documents published are usually general and concise, training, involving exercises and examples, is often needed for patent examiners to understand the particulars of any new practice.

Some court decisions (e.g., infringement/validity rulings) do not directly affect patent examination, but are nevertheless of interest to examiners (see Section 2.2).

## 2.5. Time passing

Patent examiners have to retain large amounts of knowledge and information to be able to correctly verify compliance of applications with the *Patent Act* and *Patent Rules*. Over time, some details may be forgotten, especially with regard to examination situations that occur rarely. For example, Canada is a Patent Cooperation Treaty (PCT) International Search and Preliminary Examination Authority and as such, Canadian patent examiners issue international search reports. However, in any given year, an examiner may have only one or several international applications assigned to him or her (based on IPC classification [14]). Such an examiner may therefore benefit from refresher training on how to examine international applications.

Further, when using electronic work tools, users tend to repeat the same patterns and to forget about the less used functions. A refresher training session on a complex work tool can highlight additional features and propose different ways of using the tool.

## 2.6. New work tools

Patent examiners work in a technological environment. In the 1990's, the Patent Branch transitioned to a paperless office. Paper copies of documents, such as patent applications filed at CIPO, are now electronically scanned and then destroyed. The branch now works only with the electronic version of the documents. During the transition, employees had to learn to use the new electronic work tool [18]. Similarly, the United States Patent and Trademark Office had to train all of its patent examiners on a new computer tool, at a time when computers were not routinely in use [19].

Searching prior art documents has also moved entirely to electronic databases and tools. In order to correctly search the prior art, Canadian patent examiners now have to master a Canadian patent database search tool (Intellect), a general patent database search tool (EPOQUE<sup>®</sup> and/or TotalPatent<sup>®</sup>), non-patent literature search tools (e.g., Scopus<sup>®</sup>), and, when appropriate, specialized search tools such as STN for chemical structures and GenomeQuest<sup>®</sup> for sequence listings [20].

Patent examiners have to be able to learn and adapt to new tools, as they are regularly modified or replaced. With the exception of the specialized ones, all the work tools listed above have been introduced to Canadian patent examiners in the last decade, to replace tools now discontinued, implying a large training effort.

## 3. Categories of training offered

The continuous training offered to patent examiners is informally divided into three categories: 1) intellectual property (IP) related, 2) technical and scientific, and 3) personal and career development. Each category contains both mandatory and optional activities, as will be discussed in Section 4.

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