

Toronto, January 7, 2010

The Commissioner of Patents
Canadian Intellectual Property Office
Place du Portage I
50 Victoria Street, Room C-114
Gatineau, Quebec K1A 0C9

Dear Commissioner:

RE: Submission re: Manual of Patent Office Practice (MOPOP) Draft Chapter 9

Introduction

Ogilvy Renault is a Canadian law firm with an extensive patent agency practice representing both Canadian and foreign applicants. In 2008, Ogilvy Renault attended to nearly 3000 filings in the Canadian Intellectual Property Office. The Commissioner is respectfully asked to consider the comments below with respect to draft Chapter 9 of the *Manual of Patent Office Practice* (MOPOP).

Section Commented Upon

Draft Chapter 9 of the MOPOP includes the following commentary:

Graphical representations of data, such as graphs, histograms, pie charts, and spectra are not considered to be drawings and should be included in the description. Schematics that illustrate a process, such as flow-charts, are considered to be drawings.

Comment

This section could be interpreted to prohibit including graphical representations of data in the drawings. Such a prohibition does not appear to be supported by the *Patent Act* or *Patent Rules*.

The prohibition also does not appear to be consistent with the dictionary definition of “drawing”, e.g. “n. 1a. the art of representing by line. b. delineation without colour or with a single colour. c. the art of representing with pencils, pens, crayons, etc., rather than paint. 2. a picture produced in this way.” (The Oxford English Reference Dictionary, Second edition, 1996).

Further, this prohibition is inconsistent with practice under the Patent Co-Operation Treaty (PCT), as

demonstrated by the following provisions of the Applicant's Guide:

144. Perspectives, exploded views, sections and cross-sections, and details on a different scale are all considered to be drawings. Drawings also cover flow sheets and diagrams, such as functional diagrams and graphic representations of a given phenomenon which express the relationship between two or more parameters. (Rule 7.1)

145. Where chemical or mathematical formulae and tables are included in the description, claims or abstract, they are not considered to be drawings and are thus not subject to the same requirements as drawings (see paragraphs 146 to 148). However, such graphic forms may be submitted as drawings, in which case they are subject to the same requirements as drawings. (Rule 11.10)

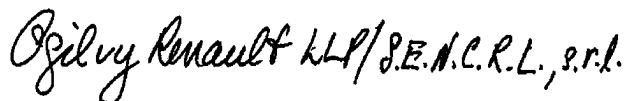
This alleged prohibition could require foreign applicants to incur considerable expense to retype specifications to incorporate graphical representations of data into the description. Most respectfully, such a requirement would do nothing to improve the quality of patents in Canada.

Recommendation

The sentence "Graphical representations of data, such as graphs, histograms, pie charts, and spectra are not considered to be drawings and should be included in the description." could be removed from the final Chapter 9 or it could be made clear that such representations of data can be included within the description or within the drawings.

We thank the Commissioner for taking the time to consider this submission.

Respectfully submitted,
OGILVY RENAULT LLP/S.E.N.C.R.L., s.r.l.

A handwritten signature in black ink that reads "Ogilvy Renault LLP/S.E.N.C.R.L., s.r.l." in a cursive script.

ALW/ne