

Golden, Stéphanie: CIPO-OPIC

From: Lapin, Philip [plapin@smart-biggarr.ca]

Sent: Monday, November 8, 2010 8:49

To: Golden, Stéphanie: CIPO-OPIC

Subject: Request for comments to the proposal to modify the document retention and disposal policy

Canadian Intellectual Property Office

Trade-marks Branch

50 Victoria Street,

Place du Portage II

Gatineau, QC K1A 0C9

Attention: Stephanie Golden

We are responding to the Trade-marks Office's request for comments to the proposal to modify the document retention and disposal policy. We request that the policy be reconsidered for the following reasons.

The Office is proposing to dispose of all paper files for applications or registrations that have been expunged, refused or abandoned for six years or more.

First, this proposal appears to be contrary to s. 29 of the Trade-mark Act, which seems to require that all documents filed with and produced by the Trade-marks Office be maintained and open to public inspection.

Second, there is a public interest in allowing anyone to review documents filed in or produced by the Trade-marks Office. The fact that it may be rare for anyone to want to access old documents does not detract from the importance or public interest in being able to access those documents. From time-to-time, it is exceptionally important to be able to access old documents, especially in cases where it is impossible to obtain the documents anywhere else.

Once a document has been copied into an electronic format, it becomes very inexpensive to maintain forever. Accordingly, we recommend either that paper copies of all documents be maintained forever or else that all paper copies be digitally copied and the digital copies be maintained forever. The cost of copying the old documents will be a one-time cost that can be justified given that the ability to review any and all documents filed in or produced by the Trade-marks Office is invaluable. It is impossible to predict the historical or other value of a document in the future.

With respect to physical exhibits, we recommend maintaining those exhibits to the extent possible.

We would be pleased to discuss these issues further, at your convenience.

Best regards,

Philip Lapin on behalf of Smart & Biggar / Fetherstonhaugh

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