



Ministère de l'Industrie  
et des Corporations Canada  
Propriété intellectuelle  
Commissionnaire des brevets  
Ottawa — Hull  
K1A 0E1

Consumer and  
Corporate Affairs Canada  
Intellectual Property  
Commissioner of Patents  
Ottawa — Hull  
K1A 0E1

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REGISTERED

April 26, 1985

Ridout & Maybee  
2300 Richmond-Adelaide Centre  
101 Richmond St. W.  
Toronto, Ont. M5H 2J7

Application No:    396,905  
Date Filed:        Feb. 23, 1982  
Title:    Drug Administration Device

Dear Sir,

Applicant requested by letter dated March 22, 1985 that this application be considered by the Patent Appeal Board for the purpose of setting a time for the commencement of an action under Section 63(2).

The Patent Appeal Board has considered the request and has advised me as follows:

The Canadian patent cited by the examiner, 1,173,795 issued on September 4, 1984, i.e. after the filing of applicant's application.

Included in Section 63(2) is the following provision:

...an application for a patent for an invention  
for which a patent has already issued under this  
Act shall be rejected...

Section 63(2) has been dealt with in the decision in re Fry 1 C.P.R. p.135 where it was found the provisions of S63(2) "...extend only to the case of an application filed after the issue of another patent disclosing or claiming the same invention..."

In view of applicant's filing date which is before the issue of Canadian patent 1,173,795, S63(2) does not set out any provisions under which the Commissioner may take any action on this application, including setting a time for applicant to commence an action in the Federal Court.

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Consequently the Board recommends that the Commissioner does not set a time for the applicant to commence an action to set aside the patent. The application should be returned to the examiner for normal prosecution.

I agree with the recommendations of the Board, accordingly I do not reject this application under Section 63(2) and I do not set a time within which Applicant should commence an action in the Federal Court. The application will be returned to the examiner for normal prosecution.

Yours truly

A handwritten signature in dark ink, appearing to read 'J.H.A. Gariépy', with a horizontal line extending to the left and a vertical line extending downwards.

J.H.A. Gariépy  
Commissioner of Patents \*