

## CORRECTION OF CLERICAL ERRORS IN THE COPYRIGHT OFFICE

### COMMENTS ON SECTION 61 OF THE CANADIAN *COPYRIGHT ACT*

by

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#### CLERICAL ERRORS

#### ERREURS MATÉRIELLES

##### CLERICAL ERRORS NOT TO INVALIDATE

##### LES ERREURS D'ÉCRITURE N'ENTRAÎNENT PAS L'INVALIDATION

61. Clerical errors in any instrument of record in the Copyright Office do not invalidate the instrument, but they may be corrected under the authority of the Registrar of Copyrights.

61. Un document d'enregistrement n'est pas invalide en raison d'erreur d'écriture: elles peuvent être corrigée sous l'autorité du registraire des droits d'auteur.

S.C. 1993, C. 15, S. 10

### §1.0 Related Sections

Section 46—Copyright Office; section 47—Powers of Commissioner and Registrar; section 52—Control of business and officials; section 57—Registration of assignment or licence; section 59—Fees regulations.

### §2.0 Related Regulations

*Copyright Regulations, SOR/97-457, s. 9 (Fees), Tariff of Fees.*

### §3.0 Prior Legislation

#### §3.1 Corresponding Section in Prior Legislation

Section 42 from 1924.01.01 to 1928.01.31; section 43 from 1928.02.01 to 1988.12.11; section 61 from 1988.12.12 to present.

## §3.2 Legislative History

### §3.2.1 S.C. 1921, c. 24, s. 42.

CLERICAL ERRORS DO NOT INVALIDATE

ERREURS D'ÉCRITURE

CLERICAL ERRORS DO NOT INVALIDATE

LES ERREURS D'ÉCRITURE N'ENTRAÎNENT PAS L'INVALIDATION

42. Clerical errors which occur in the framing or copying of an instrument drawn by any officer or employee in or of the Department shall not be construed as invalidating such instrument, but when discovered they may be corrected under the authority of the Minister.

42. Les erreurs d'écriture qui se glissent dans la rédaction ou dans la copie d'une pièce quelconque, faite par un fonctionnaire ou par un employé du Ministère ou au Ministère, ne doivent pas être considérées comme invalidant cette pièce; mais lorsqu'elles sont découvertes, elles peuvent être corrigées sous l'autorité du Ministre.

### §3.2.2 S.C. 1923, c. 10, s. 4.

COPYRIGHT OFFICE

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4. Section forty-two of the said Act is amended by striking out the word "Department" in the third line thereof and substituting therefor the words "Copyright Office".

4. Est modifié l'article quarante-deux de ladite loi par le retranchement des mots «Ministère ou au Ministère», à la troisième ligne dudit article, et leur remplacement par les mots «Bureau des droits d'auteur ou au Bureau des droits d'auteur».

### §3.2.3 R.S.C. 1927, c. 32, s. 43.

CLERICAL ERRORS DO NOT INVALIDATE

LES ERREURS D'ÉCRITURE N'ENTRAÎNENT PAS L'INVALIDATION

CLERICAL ERRORS DO NOT INVALIDATE

LES ERREURS D'ÉCRITURE N'ENTRAÎNENT PAS L'INVALIDATION

43. Clerical errors which occur in the framing or copying of an instrument drawn by any officer or employee in or of the Copyright Office shall not be construed as invalidating such instrument, but when

43. Les erreurs d'écriture qui se glissent dans la rédaction ou dans la copie d'une pièce quelconque, faite par un fonctionnaire ou par un employé du Bureau des droits d'auteur ou au Bureau des droits d'auteur

discovered they may be corrected under the authority of the Minister.

ne doivent pas être considérées comme invalidant cette pièce; mais, lorsqu'elles sont découvertes, elles peuvent être corrigées sous l'autorité du ministre.

### **§3.2.4 R.S.C. 1952, c. 55, s. 43.**

CLERICAL ERRORS DO NOT INVALIDATE

LES ERREURS D'ÉCRITURE N'ENTRAÎNENT PAS L'INVALIDATION

CLERICAL ERRORS DO NOT INVALIDATE

LES ERREURS D'ÉCRITURE N'ENTRAÎNENT PAS L'INVALIDATION

43. Clerical errors that occur in the framing or copying of an instrument drawn by any officer or employee in or of the Copyright Office shall not be construed as invalidating such instrument, but when discovered they may be corrected under the authority of the Minister.

43. Les erreurs d'écriture qui se glissent dans la rédaction ou dans la copie d'une pièce quelconque, faite par un fonctionnaire ou par un employé du Bureau du droit d'auteur ou au Bureau du droit d'auteur ne doivent pas être considérées comme invalidant cette pièce; mais lorsqu'elles sont découvertes elles peuvent être corrigées sous l'autorité du Ministre.

### **§3.2.5 R.S.C. 1970, c. C-30, s. 43.**

CLERICAL ERRORS DO NOT INVALIDATE

LES ERREURS D'ÉCRITURE N'ENTRAÎNENT PAS L'INVALIDATION

43. Clerical errors that occur in the framing or copying of an instrument drawn by any officer or employee in or of the Copyright Office shall not be construed as invalidating such instrument, but when discovered they may be corrected under the authority of the Minister.

43. Les erreurs d'écriture qui se glissent dans la rédaction ou dans la copie d'une pièce quelconque, faite par un fonctionnaire ou par un employé du Bureau du droit d'auteur ou au Bureau du droit d'auteur ne doivent pas être considérées comme invalidant cette pièce; mais lorsqu'elles sont découvertes, elles peuvent être corrigées sous l'autorité du Ministre.

### **§3.2.6 R.S.C. 1985, c. C-42, s. 61.**

CLERICAL ERRORS DO NOT INVALIDATE

LES ERREURS D'ÉCRITURE N'ENTRAÎNENT PAS L'INVALIDATION

61. Clerical errors that occur in the framing or copying of an instrument drawn by any officer or employee in or of the Copyright Office shall not be construed as invalidating

61. Les erreurs d'écriture qui se glissent dans la rédaction ou dans la copie d'une pièce quelconque, faite par un fonctionnaire ou par un employé du Bureau du droit d'auteur

that instrument, but when discovered they may be corrected under the authority of the Minister.

ou au Bureau du droit d'auteur ne peuvent être considérées comme invalidant cette pièce; mais, lorsqu'elles sont découvertes, elles peuvent être corrigées sous l'autorité du Ministre.

### **§3.2.7 S.C. 1991, c. 1, s. 52.**

#### CLERICAL ERRORS DO NOT INVALIDATE

61. Clerical errors that occur in the framing or copying of an instrument shall not be construed as invalidating that instrument, but when discovered they may be corrected under the authority of the Minister.

#### LES ERREURS D'ÉCRITURE N'ENTRAÎNENT PAS L'INVALIDATION

61. Les erreurs d'écriture qui se glissent dans la rédaction ou dans la copie d'une pièce quelconque ne peuvent être considérées comme invalidant la pièce; mais, lorsqu'elles sont découvertes, elles peuvent être corrigées sous l'autorité du ministre.

Reference to a similar provision could be found in the pre-1921 Copyright Acts, namely: R.S.C. 1906, c. 70, s. 27; R.S.C. 1886, c. 62, s. 25; S.C. 1875, c. 88, s. 20.

## **§4.0 Purpose**

This section provides for the correction of clerical errors, which errors do not invalidate the document in which they are found.

## **§5.0 Commentary**

### **§5.1 Errors of the Office**

Prior to the coming into force on February 28, 1992 of section 52 of *The Miscellaneous Amendment Act, 1991* (S.C. 1991, c. 1), this section covered only the correction of clerical errors made by the Copyright Office. The former section did not allow the correction of errors, whether clerical or not, made by an applicant, nor did it allow the correction of an error in a document of record in the Copyright Office unless the error was a clerical one attributable to the Office. Other types of errors could only be corrected upon application to the Federal Court of Canada pursuant to subsection 57(4) of the *Copyright Act*.

Since this 1991 amendment, section 61 of the *Copyright Act* permits the correction of any clerical error, whether made by or originating from the Copyright Office, an applicant, his agent or his legal representative.

## §5.2 Comparison with Other Statutes

Similar provisions are found in other Canadian statutes dealing with intellectual property but they are usually more liberal and allow for the correction of errors made either by the Administration or by the applicants. Compare, for instance:

### §5.2.1 Industrial Design Act, R.S.C. 1985, c. I-9, s. 20:

#### Corrections

Clerical errors that occur in the drawing up or copying of any instrument under this Act respecting industrial designs shall not be construed as invalidating the instrument, but when discovered, may be corrected under the authority of the Minister.

#### Correction

Les erreurs d'écriture qui se glissent dans la rédaction ou dans l'expédition des pièces délivrées sous l'autorité de la présente loi concernant les dessins industriels ne les invalident pas; mais, lorsqu'il s'en découvre, elles peuvent être corrigées sous l'autorité du Ministre.

### §5.2.2 Patent Act, R.S.C. 1985, c. P-4, s. 8:

#### Clerical errors

8. Clerical errors in any instrument of record in the Patent Office do not invalidate the instrument, but they may be corrected under the Authority of the Commissioner.

#### Erreurs d'écriture

8. Un document en dépôt au Bureau des brevets n'est pas invalide en raison d'erreurs d'écriture; elles peuvent être corrigées sous l'autorité du commissaire.

### §5.2.3 Trade-Marks Regulations (1996), SOR/96-195, rule 33:

33. (1) The Registrar may correct a clerical error in any instrument of record where

(a) the clerical error is discovered by the Registrar; or

(b) a request for correction is made by an applicant, registered owner or trade-mark agent of the applicant or

33. (1) Le registraire peut corriger toute erreur d'écriture qui s'est glissée dans un document aux archives si, selon le cas:

a) il découvre lui-même l'erreur;

b) le requérant, le propriétaire inscrit ou l'agent de marques de commerce de l'un ou de l'autre demande la

registered owner.

correction.

#### **§5.2.4 Integrated Circuits Topography, R.S.C. 1985, c. I-14.6, s. 19(4):**

Correction of errors

Correction des erreurs

The Registrar may, for the purpose of correcting any typographical or clerical error in a certificate of registration, amend the certificate or issue a new certificate in substitution therefor.

Le registraire peut corriger toute erreur matérielle, notamment typographique, dans le certificat d'enregistrement ou remplacer celui-ci par un nouveau.

#### **§5.2.5 Plant Breeders Rights Act, R.S.C. 1985, c. P-14.6, s. 66(1):**

Rectification of errors

Corrections

Subject to subsection (2), the Commissioner may, on such terms, if any, as the Commissioner deems proper, authorize

Sous réserve du paragraphe (2), le directeur peut autoriser, aux conditions qu'il estime indiquées:

- (a) the correction of any clerical error or error in translation appearing in a certificate of registration issued pursuant to paragraph 27(3)(b), in an application for plant breeder's rights, in any document filed for the purposes of such an application or in the register of index;
- (b) the amendment of any documents that belongs to the Plant Breeders' Rights Office and in respect of which no express provision for its amendment is made under this Act; and
- (c) the condonation or correction of any procedural irregularity in any proceedings subject to the authority of the Commissioner.

- a) la correction de toute erreur d'écriture ou de traduction dans le texte d'un certificat d'obtention, d'une demande d'émission d'un tel certificat ou encore tout document afférent à cette demande, ainsi que toute inscription au registre ou au répertoire;
- b) la modification de tout document appartenant au Bureau pour lequel la présente loi ne prévoit pas expressément de procédure de modification;
- c) la ratification ou la correction de toute irrégularité dans une procédure de sa compétence.

#### **§5.2.6 Patent Rules, rule 141:**

Any document relating to an application, other than a specification or drawing, may be corrected by the Commissioner if he is satisfied that the document contains a clerical error.

Tout document ayant trait à une demande autre qu'un mémoire descriptif ou un dessin, peut être corrigé par le commissaire s'il est convaincu que le document renferme une erreur de copiste.

### §5.2.7 Patent Rules (1996), rule 32(1):

Except as otherwise provided by the Act or these Rules, after the applicant is sent a notice pursuant to subsection 30(1) or (5), no amendment, other than an amendment to correct a clerical error that is obvious on the face of the application, may be made to the application unless the fee set out in item 5 of Schedule II is paid..

Sauf disposition contraire de la Loi ou des présentes règles, après l'expédition d'un avis au demandeur conformément aux paragraphes 30(1) ou (5), aucune modification, autre que celle visant à corriger une erreur d'écriture évidente au vu de la demande, ne peut être apportée à la demande sans que la taxe prévue à l'article 5 de l'annexe II ait été versée..

### §5.3 Clerical error

What constitutes a clerical error (in French: "erreurs d'écriture") is left open for judicial determination since this area is generally factual. However, a misapprehension of the facts or of an instrument by the Copyright Office, the loss of a document in the tracking system and consequential abandonment notice, a wrong interpretation as to the nature of a request, or a faulty translation might not fall within the realm of penman errors.

As decided under section 8 of the *Patent Act*, it is the nature of the error made, and not its importance, that governs whether or not it may be treated as a clerical error. Therefore, a clerical error may not necessarily be an error which is obvious or unimportant; it may very well be an error of serious consequences. The important feature of a clerical error is that it must not be intentional; it must be the result, for instance, of a mistake in the mechanical process of writing or transcribing.

### §5.4 Error May Be Corrected

There is no statutory obligation on the part of the Copyright Office to correct such an error, section 61 being permissive and not mandatory. Therefore *mandamus* does not lie to require the Registrar of Copyrights to issue a certificate of correction under section 61.

It is of interest to note that, prior to the coming into force on June 9, 1993 of section 10 of the *Intellectual Property Law Improvement Act* (S.C. 1993, c. 15), the certificate of correction was to be issued by the Minister while it is now a duty of the Registrar of Copyrights.



## §5.5 Error Does Not Invalidate

Copyright does not depend on registration but on qualified authorship of a protected work. Since registration is only optional, any error contained in a certificate of registration may not invalidate the copyright itself, nor does it affect the ownership thereof.

## §5.6 Fee

Item 4 of the Tariff of Fees (Schedule to the Copyright Regulations, SOR/97-457), provides that for the correction of a clerical error in any instrument of record, including, without further fee, issuing a corrected certificate of registration of copyright, pursuant to section 61 of the Act, there is a fee of \$65.

A certificate of correction is not substituted for a faulty certificate of registration: it is added to the register so as to indicate the modification.

## §6.0 Case Law

### §6.1 Canada

1. *Gemmill v. Garland* (1886), 2 Can. Com. R. 293, Boyd J. (Ont. H.C.).  
I have not overlooked the provisions in the 20th section of the Act 38 Vict. ch. 88 (D.), relating to clerical errors in any instrument drawn in the office of the Minister being curable, which may reflect disastrously upon errors in papers prepared by the applicants. But this does not necessarily follow, for clerical errors may be in material as well as immaterial facts, and may be important or unimportant. (at p. 297)
  
2. *Moreau v. St-Vincent* (1950) Ex. C.R. 198, Thorson J. (Ex. Ct.).  
A third objection submitted by counsel was that the Commissioner of Patents had no statutory power to annul the first certificate of registration and issue a second one in its place for a different work and in the name of a different person and that the second certificate was of no effect, I express no opinion on this objection, but even if it were sound it would not affect the plaintiff's cause of action, if he has one. Under the Copyright Act copyright in a literary work does not depend on registration but arises automatically from authorship. If, therefore, the plaintiff had any copyright he could bring an action for its infringement even if he had never obtained any certificate of registration. The registration of a copyright does not confer upon the author of a literary work any right that did not already belong to him by virtue of his authorship. (at pp. 203-204)

3. *Bayer Aktiengesellschaft v. Commissioner of Patents*, (1980), (1981) 1 F.C. 656, Mahoney J. (F.C.T.D.).

There is simply no doubt that the omission of hydrogen in the two places where the applicant now seeks to include it was due to an error. There is likewise no doubt that the corrections sought are meaningful, not trivial, and, if made, would significantly widen the applicant's monopoly.

(...) That it was an error is beyond doubt, but was it a clerical error? The respondent seems not to have decided that.

Pertinent dictionary definitions are included in the following passage from the judgment of Fullagar J., of the High Court of Australia in *The Queen v. Commissioner of Patents; Ex parte Martin*, ((1953-54) 89 C.L.R. 381 at p. 406) in which a patentee had, in good faith, described himself as the inventor, rather than the inventor's assignee, in his application. The patent issued and he sought its correction.

...the error in the application cannot, in my opinion, be described as a "clerical error". That expression is, no doubt, one of a somewhat elastic character, but it seems to me impossible to say that it covers such a mistake of substance as was here made. In the New Oxford Dictionary one meaning attributed to the word "clerical" is "Of or pertaining to a clerk or penman: esp. in 'clerical error', an error made in writing anything out". According to Webster, one meaning of the word "clerical" is "Of or relating to a clerk or copyist", and an example given is "clerical error, an error made in copying or writing". Probably no one would deny that a clerical error may produce a significant, and even profound, effect as for example, in a case in which a writer or typist inadvertently omits the small word "not". But the characteristic of a clerical error is not that it is in itself trivial or unimportant, but that it arises in the mechanical process of writing or transcribing. There is no evidence that the mistake so arose in the present case, and it is very difficult to see how it could have so arisen. The mistake, however innocently made, consists in a simple misstatement of fact, and that is the whole of the matter.

I accept that a clerical error is an error that arises in the mechanical process of writing or transcribing and that its characteristic does not depend at all on its relative obviousness or the relative gravity or triviality of its consequences. I accept the decision of the Comptroller in *Heberlein and Company A.G.'s Application*, ((1971) F.S.R. 373 at p. 377) that:

...if an error originates as a clerical error it does not subsequently change its nature if it is overlooked by someone checking the document in which it occurs or otherwise working on it. It is the clerical origin of the error which is important. (at pp. 659-660)

Section 8 provides that "clerical errors ... may be corrected by certificate under the authority of the Commissioner". "May" is permissive; it is not directory nor mandatory. There is nothing in the circumstances contemplated by section 8 that would lead me to conclude that the respondent is obliged to issue a certificate of correction once he

determines that what is sought to be corrected is a clerical error. It is in this discretion to do so. The Court cannot substitute its discretion for his. *Mandamus* does not lie to require the respondent to issue a certificate under section 8 of the *Patent Act*. (at pp. 660-661)

4. *Laurin v. Champagne* (1991), 49 F.T.R. 280, Dubé J. (F.C.T.D.).

À l'ouverture de l'audition de cette affaire ... j'ai immédiatement avisé le procureur du requérant que je doutais fort que cette Cour puisse effectuer une telle radiation (d'enregistrement du droit d'auteur) simplement au motif d'un bris de contrat. Même si la Cour fédérale, en vertu de la *Loi sur le droit d'auteur*, a la juridiction pour entendre des litiges en violation de droit d'auteur et des demandes de rectification aux registres, il n'est sûrement pas apparent que cette Cour ait la compétence voulue pour vider un litige en matière de contrat et bonifier son jugement par une ordonnance de radiation aux registres. La Cour fédérale est une Cour statutaire et sa juridiction est limitée aux pouvoirs qui lui sont expressément conférés par une loi. En principe, la compétence en matière de propriété et de droit civil (y compris contrat entre deux individus) relève du droit provincial. (at p. 282)

Cette preuve confirme donc ce que j'avais anticipé à l'effet qu'il s'agit bien d'un litige contractuel et non d'une inscription faite par erreur ou restée dans les registres par erreur. Ce n'est pas suite à la suite d'une erreur que l'œuvre en question a été enregistrée au nom de l'intimé à titre de propriétaire et au nom du requérant à titre d'auteur, puisque cet enregistrement reflétait exactement la volonté des deux parties à l'époque de l'enregistrement. Il ne s'agit pas ici non plus d'une violation de droit d'auteur pouvant être jugée par la Cour fédérale en vertu de la *Loi sur le droit d'auteur*. Dans les circonstances, la solution évidente pour le requérant est d'obtenir un jugement de la Cour supérieure de la province de Québec et par après de présenter sa demande de radiation au registraire du droit d'auteur, et si nécessaire, à cette Cour. (at p. 284)

5. *Celltech Ltd. v. Canada (Commissioner of Patents)* (1993), 46 C.P.R. (3d) 424 MacKay J. (F.C.T.D.).

As the latter has been defined by Mr. Justice Mahoney in *Bayer Aktiengesellschaft v. Commissioner of Patents* (1980) 53 C.P.R. (2d) 70 at pp. 73-4, (1981) 1 F.C. 656 (F.C.T.D.), a "clerical error" within s. 8 (of the *Patent Act*) is one "that arises in the mechanical process of writing and transcribing"; its origin is clerical, and it does not depend on its relative obviousness or the gravity of its consequences. Extrinsic evidence is admissible to establish a clerical error, within s. 8 and the clerical error need not be one obvious from the face of the document." (at p. 438)

6. *Bristol-Myers Squibb Company v. Canada (Commissioner of Patents)* (1997), 77 C.P.R. (3d) 300, Pinard J. (F.C.T.D.).

Thus, even where an error is accepted as clerical in nature, the Commissioner of Patents' decision whether to correct it is discretionary. (at p. 304)

Furthermore, I am of the opinion that in granting this general discretion to authorize the correction of clerical errors under section 8 of the (Patent) Act, Parliament clearly signalled a reliance on the specialized expertise of the Commissioner. Accordingly, the Commissioner's determination of the factors to be taken into account in exercising her discretion ought to be given curial deference, and should not be overturned unless unreasonable (see *Pezim v. B.C. Superintendent of Brokers*) (1994), 114 D.L.R. (4th) 385, at 404-406). (at p. 305)

7. *Laurin v. Mise en scène Inc.* (1992), J.E. 1145, Chicoine J. (Que. Ct.) (footnotes omitted) (On motion of plaintiff to have the name of the defendant corrected, after judgment, from *Mise en scène Inc.* to *Les productions mise en scène Ltée*).

(5) Sur le premier point, les tribunaux ont déjà décidé que l'erreur à corriger peut être celle de la partie ou de ses procureurs (in a case of retractation of judgment under 475 C.C.P.).

(6) Le deuxième point apparaît plus important. Peut-on qualifier d'erreur matérielle la méprise sur le nom de l'une des parties?

(7) De telles méprises sur le nom de corporations semblent fréquentes et les tribunaux supérieurs interprètent largement, dans l'esprit de l'article 2 du Code de procédure civile, c'est-à-dire favoriser l'exercice d'un droit plutôt que le nier.

(8) Les deux noms en cause ici ("MISE EN SCÈNE INC" et "LES PRODUCTIONS MISE EN SCÈNE LTÉE") sont visuellement et phonétiquement près l'un de l'autre. L'utilisation de la particule "Inc." ou "Ltée" ne porte vraiment pas à conséquence et entre dans le champ de ce que l'article 475 (C.C.P.) appelle erreur matérielle. Utiliser "MISE EN SCÈNE" ou le faire précéder des mots "LES PRODUCTION" est-ce bien différent?

(9) Cela peut être très différent si l'on ne vise pas la même personne. Mais ici, les documents produits au soutien de la requête (pour correction de jugement), l'adresse de la corporation et l'interrogatoire de l'un des officiers laissent voir qu'il n'y a confusion que dans le nom, mais non dans la personne.

8. *Myers Squibb Co. v. Canada (Commissioner of Patents)* (1998), 82 C.P.R. (3d) 192, Desjardins J. (F.C.A.).

(24) In my view, consideration must be given to the phrase "... may be corrected under the authority of the Commissioner" ("peuvent être corrigées sous l'autorité du commissaire") found in section 8 of the Act.

(25) The Commissioner, pursuant to section 4 of the Act, has “the charge and custody” of the records belonging to the Patent Office. In view of this, the words “under the authority of” in section 8 of the Act suggest that the Commissioner is responsible for the integrity of the system under her care. (...)

(27) What the first part of section 8 of the Act implies is that an instrument of record, which is otherwise valid, does not become invalid by reason of a clerical error. It is the instrument of record itself, and not the claim made within it, that is not invalidated by a clerical error. It is a clerical error within the instrument, and not the instrument of record itself, which may be corrected by the Commissioner. Once she came to consider the request for correction, it is obvious that the Commissioner saw the effect the change would have, if granted. It was not a change so as to have effect on the instrument itself, such as an obvious error in a name due to a typing error. The correction requested had an effect retroactive to the instrument itself. The Commissioner did not invalidate the instrument itself. She declined to make a correction, which she found to be a clerical one, on the basis that it went beyond the instrument itself.

## §6.2 United Kingdom

1. *Hardcare v. Armstrong* (1905), 21 T.L.R. 189, Willis J. (K.B. Div.).  
There was merely an error as to the place and time of its first performance, a matter which was not in any way essential to title, but merely made the entry in the register such that the plaintiff could get none of the benefits by the Act attached to registration. It must be borne in mind that none of the difficulties which attached to the construction of the assignment attached to the entry in the register, which was all that the public would have notice of. The claim in the register was plain enough, “The adaptation known as the Bullock version.” The time and place of the first representation were no part of the thing claimed. The time was material for fixing the date from which the term of 42 years or other period was to run, the place of performance for verification, but that was all. He had come to the conclusion, therefore, that there was nothing in the erroneous entries to prevent the plaintiff from relying upon his real title, and by section 21 he was entitled to the remedies given by 3 & 4 Will. IV., c. 15 as fully as if they were re-enacted in the Act of 5 and 6 Vict., c. 45. (at p. 191)

## §7.0 List of Cases

### §7.1 Canada

1. *Gemmill v. Garland* (1886), 2 Can. Com. R. 293 (Ont. H.C.); (1886), 12 O.R. 139 (Ch. D.); *aff’d* (1887), 14 S.C.R. 321.
2. *Moreau v. St-Vincent* (1950), 12 C.P.R. 32 (Ex. Ct.).

3. *Bayer Aktiengesellschaft v. Commissioner of Patents*, (1980), 53 C.P.R. (2d) 70 (F.C.T.D.).
4. *Hoffmann-La Roche Ltd. v. Commissioner of Patents* (1985), 3 C.P.R. (3d) 392 (F.C.T.D.).
5. *Laurin v. Champagne* (1991), 38 C.P.R. (3d) 193 (F.C.T.D.).
6. *Celltech Ltd. v. Canada (Commissioner of Patents)* (1993), 46 C.P.R. (3d) 424 (F.C.T.D.), *aff'd* (1994), 53 C.P.R. (3d) 59 (F.C.A.).
7. *Bristol-Myers Squibb Company v. Canada (Commissioner of Patents)* (1997), 77 C.P.R. (3d) 300 (F.C.T.D.); (1988), 82 C.P.R. (3d) 192 (F.C.A.).
8. *Hoffman-La Roche Ltd. v. Canada (Commissioner of Patents)* (1985), 3 C.P.R. (3d) 392 (F.C.T.D.).
9. *Laurin c. Mise en scène Inc.* (1992), J.E. 1145 (Que. Ct.).

## **§7.2 United Kingdom**

1. *Hardcare v. Armstrong* (1905), 21 T.L.R. 189 (K.B. Div.).

## **§8.0 Authors**

### **§8.1 Canada**

1. FOX (Harold George), *The Canadian Law of Copyright and Industrial Designs*, 2nd ed. (Toronto, Carswell, 1967), at pp. 318-323.
2. FOX (Harold George), *The Canadian Law and Practice relating to Letters Patent for inventions*, 4th ed. (Toronto, Carswell, 1969), at pp. 188-189, 220-221.
3. HUGHES (Roger T.) et al., *Hughes and Woodley on Patents* (Toronto, Butterworths, 1984), at nos. 41 and 116.

### **§8.2 United Kingdom**

1. LLOYD (R.P.), *Correction of Clerical Errors and Obvious Mistakes* (1981), 10 CIPA — The Journal of the Chartered Institute of Patents Agents 266.

### **§8.3 United States**

1. NIMMER (Melville B.) et al., *Nimmer on Copyright* (New York, Matthew Bender, 1989), at no. 7.20.

### **§9.0 Comparative Legislation**

#### **§9.1 Canada**

##### **§9.1.1 Copyright Act, 1875, section 20.**

###### CLERICAL ERRORS HOW CORRECTED

20. Clerical errors happening in the framing or copying of any instrument drawn in the office of the Minister of Agriculture, shall not be construed as invalidating the same, but when discovered they may be corrected under the authority of the Minister of Agriculture.

###### CORRECTION DES ERREURS

20. Les erreurs qui auraient pu se glisser dans la rédaction ou dans l'expédition d'un instrument quelconque dressé au bureau du ministre de l'Agriculture, ne seront pas censées l'invalider; mais, au moment de leur découverte, elles pourront être corrigées sous l'autorité du ministre de l'Agriculture.

##### **§9.1.2 Newfoundland Copyright Act, 1890, section 23.**

Clerical errors which occur in the framing or copying of any instrument drawn by an officer or employee in or for the department, shall not be construed as invalidating such instrument; but when discovered they may be corrected under the authority of the Colonial Secretary.

#### **§9.2 United States**

##### **§9.2.1 Copyright Act, 1976, subsection 408(d).**

CORRECTIONS AND AMPLIFICATIONS. – The Register may also establish, by regulations, formal procedures for the filing of an application for supplementary registration, to correct an error in a copyright registration or to amplify the information given in a registration. Such application shall be accompanied by the fee provided for by section 708, and shall clearly identify the registration to be corrected or amplified. The information contained in a supplementary registration augments but does not supersede that contained in the earlier registration.

## §9.2.2 Regulation 37 CFR 201.5.

Corrections and amplifications of copyright registrations; application for supplementary registration.

- (a) General. (1) This section prescribes conditions relating to the filing of an application for supplementary registration to correct an error in a certificate of registration or to amplify the information given in a registration, under section 408(d) (...) (2) No correction or amplification of the information in a basic registration will be made except pursuant to the provisions of this §201.5. As an exception, where it is discovered that the record of the basic registration contains an error that the Copyright Office itself should have recognized at the time registration was made, the Office will take appropriate measures to rectify its error.
- (b) Persons entitled to file an application for supplementary registration; grounds of application. (...) (2)(i) A "correction" is appropriate if information in the basic registration was incorrect at the time that basic registration was made, and the error is not one that the Copyright Office itself should have recognized. (...)
- (d)(2) As provided in section 408(d) of title 17, the information contained in a supplementary registration augments but does not supersede that contained in the basic registration. The basic registration will not be expunged or cancelled.

## §9.3 India

### §9.3.1 Copyright Act, 1957, section 49.

*Correction of entries in the Register of Copyrights.* The Registrar of Copyrights may, in the prescribed cases and subject to the prescribed conditions, amend or alter the Register of Copyrights by

- (a) correcting any error in any name, address or particulars; or
- (b) correcting any other error which may have arisen therein by accidental slip or omission.

### §9.3.2 Rule 17.

*Correction of entries in the Register of Copyrights.* The Registrar of Copyrights may, on his motion or on application of any interested person, amend or alter the Register of Copyrights in the manner specified in section



49 after giving, wherever practicable, to the person affected by such amendment or alteration, an opportunity to show cause against such amendment or alteration and communicate to such person the amendment or alteration to be made.

## **§10.0 Varia**

### **§10.1 Rectification of the Copyright Register – CIPO Circular No. 5**

Available from CIPO at the URL address  
[http://strategis.gc.ca/sc\\_mrksv/cipo/cp/circ5b.pdf](http://strategis.gc.ca/sc_mrksv/cipo/cp/circ5b.pdf)

Circular 5  
Rectifications of the Copyright Register  
April 6, 2000

#### **Rectification in a registration**

Once a copyright has been registered, the Federal Court may on request modify a registration (subsection 57(4) of the *Copyright Act*).

The procedure for obtaining a Court Order is outlined in the Federal Court Rules. These Rules may be available through any local public library and copies may be purchased from any bookstore selling government publications, or from:

Canadian Government Publishing  
Public Works and Government Services Canada  
Ottawa, Ontario K1A 0S9  
Tel.: (819) 956-4802  
Fax: (819) 994-1498

For more details concerning a Federal Court order, please address your request to a Federal Court Intellectual Property Officer at (613) 992-4238.

#### **Changes of Address**

Changes of address are not entered in the Copyright Register but, if brought to the attention of the Copyright Officer, will be noted in office records for the convenience of searches.

#### **Clerical Errors**

Under section 61 of the *Copyright Act*, a correcting certificate may be issued in cases where a clerical error has been made in preparing an application or registration document. In these cases if the error was made by the Copyright Officer, the Office will send you without any charge a correcting certificate bearing the same registration number. On the other hand, if the error was made by another party, the Copyright Office will issue a correcting certificate bearing the same registration number at a cost of C\$65. Regardless of the source of the error, if correction is acceptable, changes will be entered on the Register.

## §10.2 Rectification of the Copyright Register – CIPO Electronic Form

Available from CIPO at the URL address  
[https://strategis.ic.gc.ca/sc\\_mrksv/cipo/copyright-filing/application/engdoc/cp\\_correction\\_certificate-e.html](https://strategis.ic.gc.ca/sc_mrksv/cipo/copyright-filing/application/engdoc/cp_correction_certificate-e.html)

### REQUEST FOR CERTIFICATE OF CORRECTION

A certificate of correction may be issued in cases where a clerical error has been made in preparing an application or registration document.

Note that address changes are not entered in the Register of Copyrights but will be noted in office records for the convenience of searches.

### Request for certificate of correction

(\* Mandatory Field)


<b>*Registration Number</b>	<input type="text"/>
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#### IMPORTANT NOTE:

Please note that only clerical errors may be corrected under the authority of the Registrar of Copyrights.

#### Description of the correction

Enter your text describing the correction in the box below:

**\*Request by**

A. Family Name

First Name

Init.

OR B. Name of firm

Address

City/Town

Prov./State

Country

Postal/Zip Code

Telephone No.

Fax No.

E-Mail address

<input type="text"/>
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### Closing Details

<b>*Payment Method</b>	<input type="checkbox"/> <b>No charge</b> <input type="checkbox"/> <b>Credit Card</b> (Your credit card information is entered after the validation process.) <input type="checkbox"/> <b>Deposit Account</b> (Only if assign by CIPO)  <u>Authorization Statement</u> <i>The Registrar of Copyrights on behalf of the Receiver General of Canada is hereby authorized to deduct the prescribed filing fee from this firm's deposit account.</i>  Deposit Account <input type="text"/>
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### Comments

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Validate

**ROBIC** + LAW  
+ BUSINESS  
+ SCIENCE  
+ ART

**ROBIC** + DROIT  
+ AFFAIRES  
+ SCIENCES  
+ ARTS

