CANADIAN PATENT ACT

s.2 “invention” means any new and useful art, process, machine, manufacture or composition of matter or improvement [thereof].

[32] The patent system is based on a "bargain", or *quid pro quo:* the inventor is granted exclusive rights in a new and useful invention for a limited period in exchange for disclosure of the invention so that society can benefit from this knowledge. This is the basic policy rationale underlying the Act. The patent bargain encourages innovation and advances science and technology. Binnie J. explained the *quid pro quo* as follows in *AZT*, at para. 37:

> **A patent, as has been said many times, is not intended as an accolade or civic award for ingenuity. It is a method by which inventive solutions to practical problems are coaxed into the public domain by the promise of a limited monopoly for a limited time. Disclosure is the *quid pro quo* for valuable proprietary rights to exclusivity which are entirely the statutory creature of the *Patent Act*.**

The "Viagara" case 2012 SCC 60

[76] Where the specification does not promise a specific vault, no particular level of utility is required, a mere "scintilla" of utility will suffice. However where the specification sets out an explicit "promise", utility will be measured against that promise …The question is whether the invention does what the patent promises it will do.

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[80] The promise of the patent must be ascertained. Like claims construction, the promise of the patent is a question of law. Generally, it is an exercise that requires the assistance of expert evidence: . . .

This is because the promise should be properly defined, within the context of the patent as a whole, through the eyes of the POSITA, in relation to the science and Information available at the time of filing.

2010 FCA 197

. . . Even if utility is not demontrated at the filing date, the utility requirement will be met by sound prediction . . . sound prediction requires that the patentee provide "a solid teaching", it cannot protect "a lucky guess" or "mere speculation". A patentee does not have to explain exactly why the invention works, but it must provide the underlying knowledge that it does work.

2013 FC 141 at para 162