

Fostering a Culture of Innovation in Canada

Pre-Budget Submission to the
House of Commons Standing Committee on Finance
By the Intellectual Property Institute of Canada

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INTELLECTUAL PROPERTY INSTITUTE OF CANADA
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Introduction

About IPIC

The Intellectual Property Institute of Canada (IPIC) is the professional association of patent agents, trademark agents and lawyers practising in all areas of intellectual property (IP) law. We have a long history of working with the federal government on a range of issues that are vital for Canadian economic prosperity.

Our membership totals over 1,700 individuals, consisting of practitioners in law firms and agencies of all sizes, sole practitioners, in-house corporate intellectual property professionals, government personnel, and academics. Our members' clients include virtually all Canadian businesses, universities and other institutions that have an interest in intellectual property (e.g. patents, trademarks, copyrights and industrial designs) in Canada or elsewhere, and also foreign companies who hold intellectual property rights in Canada.

Productivity, innovation, and intellectual property are all connected

The productivity-innovation-IP connection was underlined by the Standing Committee on Industry, Science and Technology in its 2013 report titled *Intellectual Property Regime in Canada*. The Committee recommended that the government “further study means to grow innovative Canadian companies to keep valuable intellectual property in Canada and close the productivity gap with our competitors.”¹

Growing innovative companies includes the key step of protecting the IP inherent to their innovations, using tools such as patents, trademarks and industrial designs. Why is this step important? IP, when properly protected, provides a commercial advantage to the innovator. It can also help in obtaining funding from venture capitalists – a patent could be the young company's biggest asset.

In Canada, that essential step, in the innovation process, of seeking IP protection is not yet ingrained in the entrepreneurial culture.

Accordingly, after studying submissions and hearing witnesses, the Standing Committee on Finance stated in its December 2014 report *Towards Prosperity: Federal Budgetary Priorities for People, Businesses and Communities* that “the government should work with [Canadian] businesses in fostering a culture of innovation.”²

Given this, IPIC has two recommendations to foster a culture of innovation and improve productivity.

¹ *Intellectual Property Regime in Canada, Report of the Standing Committee on Industry Science and Technology*, March 2013, 41st Parliament, First Session, Recommendation 4.

² *Towards Prosperity: Federal Budgetary Priorities for People, Businesses and Communities, Report of the Standing Committee on Finance*, December 2014, 41st Parliament, Second Session, Recommendation 20.

Recommendation 1: Explore the feasibility of an “innovation box”.

It is a recommendation by the Standing Committee on Finance

It is well known that Canada lags in private sector investment in R&D and commercialization. This may have prompted the Standing Committee on Finance to recommend in its December 2014 report that the government explore the feasibility of a “patent box”. We are therefore encouraging the government to carry out the Committee’s recommendation, with the nuance that the expression “innovation box” be used. The Canadian Chamber of Commerce, in its 2014 submission to the Committee, and other organizations use “innovation box” instead of “patent box”. Because the results of innovation can include many forms of intellectual property such as patents, trademarks, and industrial designs, a broader term seems more appropriate, at least for the feasibility study.

The innovation box is a new incentive

An innovation box is a tax incentive that allows business income from intellectual property to be taxed at a lower rate than regular income. The expression “innovation box” comes from the checkbox provided on tax forms to identify the revenues eligible to the reduced innovation tax rate. This type of measure is being pursued in other countries including the U.K. and China and a June 10, 2015 article from global law firm DLA Piper states that key tax writers in the U.S. Congress are looking at the concept: “In recent weeks, a major concept has emerged in tax reform discussions: the establishment of a patent or innovation box. The patent box is a mechanism that is used to encourage domestic innovation and the commercialization of innovative new products. Several major US trading partners already use patent or innovation boxes as part of their tax regimes.”³

Recommendation 2: Modernize the regulatory framework for patent and trademark agents by simple amendments to the *Patent Act* and to the *Trade-marks Act*.

The framework is not complete

In the course of its 2012-13 study of the intellectual property regime, the Standing Committee on Industry heard many witnesses, including the Canadian Intellectual Property Office (CIPO, the agency responsible for the administration and processing of the greater part of IP in Canada), speak about the low awareness among SMEs of the role and importance of IP. Of course, low awareness means that Canadian SMEs may not be protecting their IP as they should, resulting in fewer registered IP assets than their competitors in countries where a culture of innovation may be more prevalent.

³ Evan M. Migdail and Bruce Thompson, *Patent box concept emerges on the tax reform agenda for US Congress*, June 10, 2015. Accessed on July 14, 2015 at <https://www.dlapiper.com/en/us/insights/publications/2015/05/patent-box-concept-emerges-us-tax-reform/>

An important measure to increase the use of the IP system – a key step in successful innovation – is to ensure that users have confidence in the regime. In this regard the government has taken steps to modernize the Canadian IP system, most recently by adopting legislative changes to prevent inadvertent loss of IP rights and to protect confidential communications between clients and their agents.

Another step now needs to be taken: Modernize the regulatory framework for patent and trademark agents.

Entrepreneurs must see that their innovation professionals, the patent and trademark agents they call upon, are regulated like the other professionals they hire (e.g. engineers, accountants, and lawyers). There are currently rigorous qualification exams for patent and trademark agents, administered by CIPO with IPIC's assistance. However, other expected elements of a professional regulatory system such as a mandatory code of conduct, continuing education requirements, and a proper discipline process are missing. CIPO has recognized the need for reform and worked with members of the profession to identify areas in need of improvement. The conclusions of these working groups were presented in a 2014 report titled *Modernizing the IP Community*.

In summary, the profession and the government have taken many steps to build the system but simple legislation is lacking to provide the profession with the authority to complete the framework.

Solution: Delegate responsibility to the profession

Already, IPIC members adhere to a voluntary code of conduct and the Institute offers a range of training and continuing education programs. But the profession does not have the authority to regulate itself in the same manner as almost all other professions in Canada.

We therefore recommend that the *Patent Act* and the *Trade-marks Act* be amended by adding a section that would allow the Minister of Innovation, Science and Economic Development to:

- Designate a regulatory body;
- Require that body to report on its activities, to ensure that it is acting in the public interest;
- Revoke the regulatory powers from that body if necessary.

The Minister could choose either an existing organization such as IPIC or a new professional body to be the regulator. The regulator could then implement recommendations from the *Modernizing the IP Community* initiative by managing the admission process, requiring continuing education, maintaining a code of conduct and managing a complaints mechanism and discipline process. As is often the case for Canadian professions, the discipline process could involve participation by members of the public.

Results will be positive for the public interest and for the government

The public will understand the qualifications of the professionals and know the process relative to complaints.

The Minister will be able to monitor the regulatory activities but the government will not have to devote resources to an activity that is not usually done by governments in Canada.

The profession, the group most motivated to devote time and resources to sustaining the excellence of the profession, will manage its regulatory system.

Conclusion

IPIC makes two recommendations to foster a culture of innovation in Canada. The first, *explore the feasibility of an “innovation box”*, could lead to a new tax incentive that would encourage commercialization. The second, *modernize the regulatory framework for patent and trademark agents by simple amendments to the Patent Act and to the Trade-marks Act*, would protect the public interest without the government having to devote resources to assuming responsibility for a role that is not traditionally part of the role of a government in Canada.

We thank the Standing Committee on Finance for considering our recommendations. For more information, please contact our Acting Executive Director, Anne-Josée Delcorde, at 613-234-0516 or ajdelcorde@ipic.ca.