

Intellectual Property Institute of Canada (IPIC) Submission on Economic Growth: Ensuring Canada's Competitiveness

Written Submission to the Standing Committee on Finance (FINA) for Pre-Budget
Consultations in Advance of Budget 2019

July 30, 2018

LIST OF RECOMMENDATIONS:

Recommendation 1: IPIC proposes that the government create a first patent program, to encourage inventors, startups, and SME's at a critical point to file patent applications for their inventions. The rebate would cover 50% of the patenting expenses (gov't and professional fees incurred), with a maximum funding of \$25,000 per applicant.

Recommendation 2: The federal government should create an intellectual property box ("IP Box") tax incentive for income derived from intellectual property. IPIC would propose a 50% reduction in the corporate tax rate, for a period of 5 years following the commercialization of the Canadian issued intellectual property rights.

DRIVING CANADIANS COMPETITIVENESS IN THE GLOBAL KNOWLEDGE ECONOMY THROUGH INNOVATIVE INTELLECTUAL PROPERTY (IP) APPROACHES

Canada's competitiveness depends on our ability to encourage, reward, and commercialize innovative ideas, products and services in our own back yard and around the world. The Intellectual Property Institute of Canada (IPIC) has identified two priorities that will stimulate economic growth in Canada and make our businesses and our country more competitive.

In a global knowledge economy that rewards new inventions and applications of technology, affirming the positive right to benefit from innovation is critical. The federal government should focus on changes that will ensure Canadian businesses are able to adapt to the rapidly changing needs of communities and consumers. We should also look to set an attractive regulatory environment for global businesses looking to do business in Canada. In doing so, we can make Canada a better place to work and create, while also drawing innovative businesses from around the world to our shores.

With the 2019 Federal Budget, Canada has the opportunity to be a world leader in stimulating intellectual property rights, empowering commercialization and encouraging companies to scale effectively. The following recommendations will ensure our innovative businesses can reach their full potential.

1. CREATE A FIRST PATENT PROGRAM

In the December 2016 report of the Standing Committee on Finance: **CREATING THE CONDITIONS FOR ECONOMIC GROWTH: TOOLS FOR PEOPLE, BUSINESSES AND COMMUNITIES** to the House of Commons in preparation for Budget 2017, the Committee included a recommendation from IPIC for a federal 'First Patent Program' similar to that in Quebec. Then again in the December 2017 report of the Standing Committee on Finance: **DRIVING FOR INCLUSIVE GROWTH – SPURRING PRODUCTIVITY AND COMPETITIVENESS IN CANADA**, the Committee made the same recommendation for Budget 2018.

RECOMMENDATION 47 (2016) AND RECOMMENDATION 46 (2017)

That the Government of Canada create a first patent program, with a design that is similar to that launched by the Government of Quebec. This program should subsidize the expenses incurred by small and medium-sized businesses obtaining a first patent.

Unfortunately, the recommendations did not make their way into Budget 2017 or 2018, but the need still exists, and aligns now more than ever with the government plans around the Innovation and Skills Plan and accompanying National IP Strategy.

The Office of Chief Economist of the United States Patent and Trademark Office (USPTO) recently studied the effect of a patent on 45,819 start-ups who filed their first patent application in the USPTO. The study confirmed that a patent allowance has a significant economic impact on these start-ups, such as on sales growth (51%), employment growth (36%) and an improvement of the quality of subsequent innovations.ⁱ

The Québec government launched its First Patent Program in July 2015 to encourage small and medium-sized businesses to patent their inventions. The Québec Program offers eligible businesses a subsidy on expenses related to obtaining their first patent. The credit equals 50% of the incurred expenses, up to \$25,000.ⁱⁱ There has been high demand for this program as funds allocated for the period of July 2015 to present were exhausted prior to the end of the fiscal periods.

IPIC proposes that the Government of Canada create a similar program through Budget 2019. The program would provide assistance to inventors, start-ups, and SMEs at a critical point where they have developed an innovative idea and are in a position to seek patent protection but may not have the financial resources to do so – or may not understand the importance of doing so. In fact, IP agents often find after early stage consultations with Canadian businesses that they have patentable ideas and inventions without even realizing it. And these innovations can have significant impacts on their success in domestic and global markets.

Thus, the program would encourage qualified Canadian inventors and companies to file patent applications for inventions that provide the foundation of a successful venture. It would also provide businesses with the knowledge and comfort in working with IP agents to build an IP portfolio to help grow and compete. The financial aid for protecting their first inventions will allow businesses to reallocate capital saved in the patenting process into further developing their business ventures.

Estimated Costs of the Program

- The rebate would cover 50% of patenting expenses. Such expenses would include patenting costs and professional fees incurred up to the patent's grant.
- IPIC believes the maximum funding provided by the program (the 50% of expenses) should be \$25,000.
- We estimate that there are currently about 600 to 800 applicants/year who file a first patent application.
- Therefore, if the program is successful in increasing the number of applications, we could use the figure of 1,000 applicants/year for financial estimates.
- The program cost would therefore be in the range of \$25 million plus administration costs.

2. LAUNCH AN INTELLECTUAL PROPERTY BOX (“IP BOX”)

The federal government should consider adopting an IP box model to provide favorable tax treatment for income derived from intellectual property.

The expression “IP Box” comes from a checkbox provided on tax forms to identify revenues that would be eligible for the reduced innovation tax rate.

There is a distinction between R&D tax incentives and an IP box. R&D incentives support technology developments or input into the innovation process; conversely IP boxes support the output or commercialization of R&D. In other words, IP boxes differ from tax credits for R&D because they operate on the “back end” of the production cycle; innovation credits and deductions, on the other hand, operate on the “front end” of the cycle. These incentives are complements and not substitutes, working together to improve both R&D activity and commercialization activity in Canada.

Notably, Québec announced, in its 2016 budget, a similar patent box initiative that would lower corporate income tax from 11.8 to 4 percent, as of January 2017, on income that meets a number of criteria. Saskatchewan also introduced an IP Box tax incentive that reduces the corporate tax rate for eligible corporations to 6% for a period of 10 years on income derived from commercializing a broad range of intellectual property. Ontario also announced a commitment to introduce an IP box tax incentive in their 2018 provincial budget. See **Appendix A** for a list of provincial incentives in place to encourage registering and commercializing intellectual property rights.

An IP box would also allow the Canadian economy to remain competitive despite the recently reduced corporate tax rates in the United States.

Cost Indicators

- In its 2016 budget, the Québec government estimated costs of \$135 million over five years for its fiscal incentive.
- Statistics released in September 2017 by the UK Revenue and Customs department (see **Appendix B**) indicate that in 2014-15, the second year of the UK Patent Box, 1135 companies claimed the tax relief (up 37% over previous year), for a total value of £651.9 million. Canada must not risk falling too far behind in our ability to incentivize intellectual property commercialization.

CONCLUSION AND REQUEST TO APPEAR BEFORE THE COMMITTEE

Canada's ability to compete globally rests on its ability to spur new ideas and bring new products and services to global markets. We have aimed to highlight programs that not only raise the bar but do so in a cost-effective way. New approaches are needed that extend beyond traditional subsidies to make it fast and effective to bring new products to market.

To encourage R&D, manufacturing, and commercialization of intellectual property, Canada must be competitive on a number of fronts, but the latest global push is the competition on incentives for innovation and IP. The following link (<http://www.ipic.ca/uploads/media/5fdzbms05.pdf>) provides an overview of incentives offered by other countries, many of which are significant trading partners with Canada and/or leaders in the Global Innovation Index (<https://www.globalinnovationindex.org/>).

You will notice that the US is not mentioned in the list of Countries currently providing IP incentives, as they have yet to introduce a First-Patent Program or IP Box tax incentive. Pundits may say this is because recognition of the importance of IP to business growth is already embedded in the US business culture, but regardless, this also presents a wonderful opportunity for Canada in 2019 to be first to market in North America with a favourable tax treatment for revenue derived from intellectual property, and a rebate program to encourage filing of a first patent application. This would send a clear message to global companies that Canada is an attractive market for registering and commercializing intellectual property rights.

IPIC would highly value an opportunity to appear before the committee and present testimony about these recommendations and further expand on the significance of IP protection to Canada's international competitiveness.

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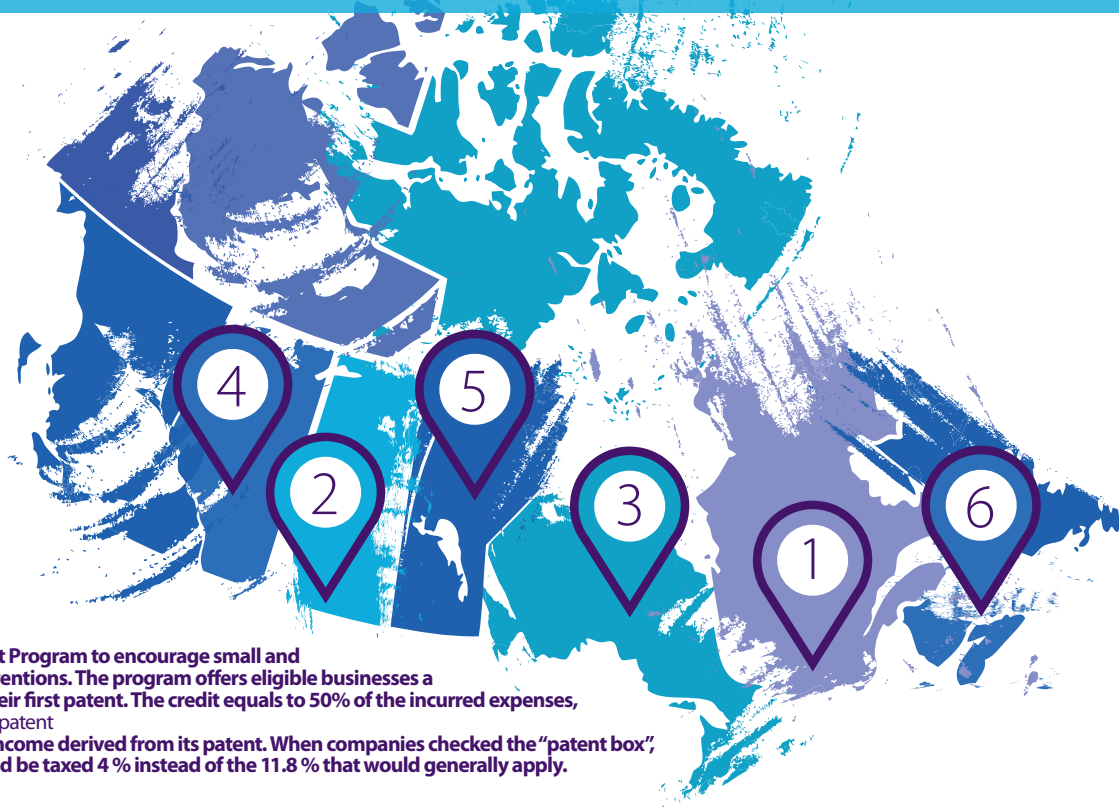
ⁱ Farre-Mensa, Hegde and Ljungqvist, "The Bright Side of Patents", Office of Chief Economist, USPTO Economic Working Paper Series, Working Paper No. 2015-5, December 2015

ⁱⁱ Additional information on the Program may be obtained at: Ministère de la science, de l'économie et de l'innovation, *Programme premier brevet*, updated on March 15, 2016, <https://www.economie.gouv.qc.ca/bibliotheques/programmes/aide-financiere/programme-premier-brevet/> (accessed on April 14, 2016)

Intellectual Property Incentives for a Competitive Innovation Economy

The Intellectual Property Institute of Canada (IPIC) proposes three complementary programs to help Canadian businesses innovate, commercialize, and leverage their intellectual property in order to remain competitive in a global innovation economy.

The three programs are a 'First Patent' rebate on services, a 'Commercialization Coupon' for researchers, and an IP Box tax incentive. If introduced, these IP incentives would create a regulatory environment in Canada attractive to both domestic and foreign businesses to conduct research and commercialize intellectual property. The map below identifies provinces that have already set up or are looking into creating similar types of incentives.



1 Québec

The Québec government offers a First Patent Program to encourage small and medium-sized businesses to patent their inventions. The program offers eligible businesses a subsidy on expenses related to obtaining their first patent. The credit equals to 50% of the incurred expenses, up to \$25,000. More information: bit.ly/QCfirstpatent

The government also offers a tax break for income derived from its patent. When companies checked the "patent box", the qualifying income from innovation would be taxed 4 % instead of the 11.8 % that would generally apply. More information: bit.ly/QCpatentbox

2 Saskatchewan

The province of Saskatchewan supports the commercialization of new and transformative innovations, by reducing the provincial Corporate Income Tax rate for eligible corporations to six per cent for a period of 10 years—on taxable income earned from the commercialization of a broad range of qualifying types of intellectual property in Saskatchewan. More information: bit.ly/SKIncentives.

3 Ontario

In its 2018 provincial budget the Ontario Liberal government indicated a commitment to improving competitiveness and maintaining a competitive tax system. They have shown an interest in tax incentives for income deriving from intellectual property. More information: bit.ly/ONIncentives.

4 Alberta

The Alberta Innovation Voucher and Micro-Voucher programs have been designed to support innovation for Alberta SMEs. The program supports SMEs working to advance technologies and get closer to commercialization. Alberta's investment is in the range of \$10,000-\$100,000 paid directly to the service providers named by the SME. This includes professional fees for patent development. More information: bit.ly/ABIncentives

5 Manitoba

The government of Manitoba, under their Commercialization Support for Business Program (CSB), offers a rebate for IP services to small businesses of less than 50 employees and less than \$15M per year in gross revenue. The rebate is part of a broader product development rebate, which has a maximum value of \$50 000 per business. More information: bit.ly/MBIncentives.

6 Prince Edward Island

The government of PEI created a Development and Commercialization Fund to assist businesses through the final stages of developing a new product or services. It offers funding to businesses to commercialize their highly innovative product, service or process by supporting various activities, including the development and protection of IP. More information: bit.ly/PEIncentives.

In the United Kingdom, Her Majesty's Revenue & Customs (HMRC) publish annual statistics on the uptake of the Patent Box and Research and Development Tax Credits by domestic companies



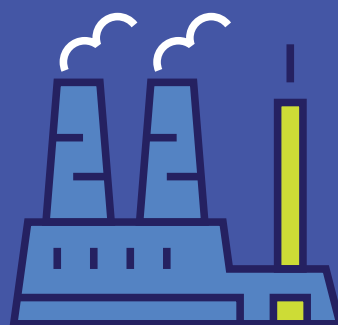
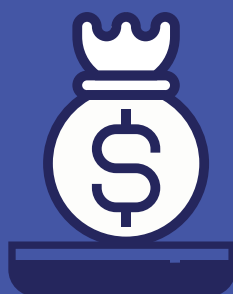
1135
companies

filed for tax relief
under the
Patent Box
in 2014-15

up 37%
over
previous
year

Total value of
Patent Box claims
in 2014-15

=
**£651.9
Million**
up 78.3 %
over
previous
year



Manufacturing
companies

made up

just
over
50%

of the claimants
to the Patent Box

R&D
Tax Credit
usage is now
also increasing:
2015-16 statistics
showed an
increase of 22%
of total R&D claims
by SME's,
and an
increase of 5%
by large companies



Number of
first-time
claimants
for R&D tax credits
has more than
doubled
since bringing in
the Patent Box
program in 2013

*There is a two year lag on release of Patent Box statistics from HMRC, the 2017 release covers the 2014-15 fiscal year.

References:

gov.uk/government/uploads/system/uploads/attachment_data/file/644599/2017_RD_publication_commentary_final.pdf
gov.uk/government/uploads/system/uploads/attachment_data/file/643860/Patent_Box_Statistics_2014-15.pdf

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