INTELLECTUAL PROPERTY INSTITUTE OF CANADA
INSTITUT DE LA PROPRIÉTÉ INTELLECTUELLE DU CANADA

IPIC

Intellectual Property Institute of Canada (IPIC) Submission on Helping Canadian Businesses Innovate, Commercialize, and Compete

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

August 4, 2017

EXECUTIVE SUMMARY

In this submission, the Intellectual Property Institute of Canada (IPIC) proposes three complementary programs to help Canadian businesses innovate, commercialize, and leverage their intellectual property to compete and grow.

IPIC has therefore focused our submission on the following question posted by the Standing Committee on Finance (FINA) for this consultation:

*2. What federal measures would help **Canadian businesses** to be more productive and competitive?*

For example, what measures would help businesses to undertake research, innovation and commercialization, purchase advanced technology and equipment, invest in the training and development of their employees, participate in global value chains and increase their international market share?

Our first proposal addresses the need to foster a culture of innovation in Canada. The proposed "first patent" program would provide a subsidy that encourages new innovators to obtain their first patent when they **innovate**. New innovators are often hesitant to allocate resources to the protection of their intellectual property (IP). The program would result in a valuable asset useful in leveraging funds and attracting partners for commercial development.

Our second proposal is intended to address the comments by most stakeholder groups who addressed the Standing Committee on Industry, Science and Technology in June of 2017, during their study on intellectual property and technology transfer. Canadian businesses and researchers need to improve on the crucial step of **commercializing** our innovations and intellectual property if we want our economy to grow. In our submission to Innovation, Science and Economic Development Canada on a new National IP Strategy this July, IPIC recommended launching a 'commercialization coupon' to provide an incentive for business and researchers on the important step of planning for commercialization of their innovations and intellectual property.

Our third proposal is meant to help Canada become a global centre of innovation, help companies "scale up", and retain R&D and manufacturing in Canada. The proposed "innovation box" tax incentive would encourage companies to develop and implement Canadian innovations, by allowing business income derived from intellectual property to be taxed at a lower rate than regular business income. This would also allow companies commercializing their intellectual property and innovations to **compete and grow**.

The three programs are complementary in that they are intended to support the commercial implementation and global competitiveness of Canadian innovations and intellectual property, while targeting both ends of the "innovation gap" in the Canadian economy. Together, these programs will support Canadian R&D, commercialization, and job growth.

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.

RECOMMENDATION 47

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 recommendation did not make its way into Budget 2017, but the need still exists, and aligns now more than ever with the government plans around the Innovation Agenda 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.[1]

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.[2] There has been high demand for this program as funds allocated for the period of July 2015 to March 2016 were exhausted prior to the end of the period.

IPIC proposes that the Government of Canada create a similar program through Budget 2018.

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. Thus, the program

[1] 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

[2] 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)

would encourage qualified Canadian inventors and companies to file patent applications for inventions that provide the foundation of a successful venture. It would thus provide businesses with financial aid for protecting their inventions at an early stage, and allow businesses to reallocate capital saved in the patenting process into further developing their business ventures.

Estimated Costs of the Program

- The grant 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. PROVIDE A "COMMERCIALIZATION COUPON" TO RESEARCHERS RECEIVING FEDERAL GRANTS TO SUPPORT COMMERCIALIZATION ACTIVITIES SUCH AS INTELLECTUAL PROPERTY DEVELOPMENT, MARKET STUDIES, AND BUSINESS PLAN PREPARATION

Protecting and commercializing innovations using intellectual property can be time and cost-prohibitive for businesses. Because of the resources required, researchers may only consider seeking intellectual property protection if they already have a commercialization partner in industry, with the result that some patent and trademark commercialization opportunities may be lost.

To encourage researchers receiving federal grant funding (ex: operating grants from NSERC / CIHR / SSHRC) and to protect intellectual property developed in the course of their research, the Federal Government could make available to researchers a "Commercialization Coupon", as a one-time-only option in the span of a grant term (either during the period of the grant or within one year of the grant's completion), to support commercialization activities.

The coupon would provide a small amount of additional funding to the researcher for limited activities, specifically pertaining to commercialization: primarily for intellectual property, but other activities could be included, such as consultant fees for a market study, or business plan preparation.

The amount of the coupon would be set at $10,000-$20,000, possibly depending on the size of the operating grant. The funds would be dispensed only to successful grant holders, but without further competition, or peer review.

As a requirement to the release of funds, forms should be completed by both the researcher and the technology transfer office of the institution. Funds should only be applied against the proposed commercialization activities, or to reimburse for those activities (if already undertaken, for example if urgent patent filings previously made prior to a public disclosure).

This solution has the advantage of permitting commercialization activities to follow grant money, without the need to be included in the budget of an operating grant before an invention is made. The previously conducted peer review process deeming the proposed research to be meritorious need not be repeated. A separate commercialization review panel need not be convened.

Not all operating grant holders will access this funding. Indeed, it is entirely optional. Many researchers will have no desire to undertake commercial activities.

For researchers that have the desire to proceed with commercial activities, the requirement of the coupon to be supported by the institution's technology transfer office has the benefit of bringing these two parties together. The researcher will benefit from the commercialization officer's expertise.

Commercialization activities can be expensive, and researchers need not locate a commercial partner in industry prior to proceeding with intellectual property protection. Instead, the coupon will encourage researchers to have patent protection at least provisionally in place before undertaking discussions with industry.

The commercialization coupon would encourage researchers to take inventions forward, when made during the course of a government funded research grant. This is a necessary step to bringing such developments to fruition, ultimately benefitting the Canadian public that funded the research.

Estimated Costs of the Program

- IPIC believes the funding provided by the program should be for $10,000-$20,000 to cover the cost of commercialization related work by the researcher, with a maximum dependent on the size of the operating grant.

3. LAUNCH AN "INNOVATION BOX"

To encourage R&D and manufacturing, Canada must be competitive on a number of fronts, the newest being incentives for innovation and IP. Appendix A provides an overview of incentives offered by other countries.

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

The expression "innovation box" comes from a checkbox provided on tax forms to identify revenues that would be eligible for the reduced innovation tax rate. The expression "patent box" is also often used.

There is a distinction between R&D tax incentives and innovation boxes. R&D incentives support technology developments or input into the innovation process; conversely innovation boxes support the output or commercialization of R&D. In other words, innovation 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 last budget, an innovation 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. An innovation box would allow the Canadian economy to remain competitive despite the proposed corporate tax changes 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 on September 14 by the UK Revenue and Customs department indicate that in 2013-14, the first year of the UK Patent Box, 700 companies claimed the tax relief, for a total value of £342.9 million (approx. $590 million).[3] Note that the UK program has since been revised following discussions within the EU and the OECD about setting certain common rules for innovation box type program.

[3] Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/552641/Sep2016_201314_PB_Official_Statistics.pdf

CONCLUSIONS

To help Canadian businesses innovate, commercialize, and compete, IPIC makes three recommendations for Budget 2018. The proposed "first patent" program would provide a subsidy that encourages new innovators to obtain their first patent. The proposed 'commercialization coupon' would provide researchers and companies an incentive for taking the crucial step of planning for and commercializing their intellectual property in Canada. And finally, the "innovation box" would encourage companies to develop and implement Canadian innovations, by allowing business income derived from intellectual property to be taxed at a lower rate than regular business income.

We thank the Standing Committee of Finance for considering our recommendations. For more information, please contact our Executive Director, Adam Kingsley, at 613-234-0516 or akingsley@ipic.ca.