

Written Submission for the Pre-Budget Consultations in Advance of the Upcoming Federal Budget

August 2020



Intellectual Property Institute of Canada
Institut de la propriété intellectuelle du Canada

RECOMMENDATIONS

- **Recommendation 1:** We recommend that the Government of Canada implement a First Patent Program or patent incentive program similar to Quebec's Passeport Innovation, to cover both the initial searching and establishment of an IP strategy, and the drafting and filing of at least a first patent application on an invention.
- **Recommendation 2:** We recommend that the Government of Canada stimulus program directed to Canadian SMEs provide funds for Brand Protection Strategy to cover costs associated with clearance searches and trademark applications.
- **Recommendation 3:** IPIC would like to see legislation or policy mandating that all federal government subsidies and research grants must earmark a small percentage of the funds to be used on IP strategic advice and professional services to ensure our public investments in Canadian innovations are protected and commercialized by Canadian companies.

INTRODUCTION

The economic downturn caused by the COVID-19 pandemic has been unprecedented and has impacted nearly every industry in Canada. For example, the latest Statistics Canada report found that Canada lost over 3 million jobs and that the unemployment rate rose to 13.7%.¹ It is likely that things will continue to get worse before they get better. However, it will be important for the Government of Canada to plan for its economic recovery through stimulus programs that will help industries regrow.

Prior to the pandemic, startup companies and small businesses in Canada were some of the fastest growing, creating employment and contributing to the economy. According to Business Development Canada, small businesses employ around 70% of private sector workers in Canada and small-and-medium sized enterprises represent 54% of the economic output produced by the business sector.²

Intellectual property (IP) has been proven to drive business growth and success. The 2019 IP Canada Report from the Canadian Intellectual Property Office (CIPO) found that small-and-medium-sized enterprises that are aware of or hold formal IP “are more innovative than SMEs that do not.”³ SMEs holding formal IP were 2.1 times more likely to be innovative in marketing and 2.6 times more likely to be innovative in product offering. The same report found that the same SMEs were 3 times more likely to expand domestically and 4.3 times to expand internationally. Overall, SMEs holding IP were 1.9 times more likely to grow and scale than SMEs without IP.

In order to recover quickly from the COVID-19 pandemic and return to the economic growth levels seen prior to the downturn, governments will need to deploy innovative programs and policies to help small businesses. This includes incentivizing companies that are just beginning and have the potential of being successful. This also includes supporting businesses in acquiring and leveraging tangible and intangible assets, such as patents and trademarks. Programs and policies will need to ensure they support rapid short-term growth and steady long-term success.

The economic impacts of COVID-19 in 2020 are also in contrast to the economic recession from 2008/2009. The last economic contraction in Canada saw a disproportionate impact on industries such as construction and manual labour, which are dominated by men. The current economic situation though has seen further impacts on industries that are dominated by women, such as retail and tourism. Statistics Canada found employment losses from February to April totaled 1,537,000 (-16.9%) for women and 1,468,000 (-14.6%) for men.⁴ This means that strategies and policies that governments implement to recover from this economic downturn cannot be the same as in 2008/2009. In light of this, investments in intellectual property are non-gender specific and are able to support various types of industries, from construction through to retail.

IPIC was very pleased to see the Ontario government announce recently that the [Ontario COVID-19 Rapid Research Fund](#) would earmark a portion of the funds to cover costs associated with licensing and

¹ <https://www150.statcan.gc.ca/n1/daily-quotidien/200605/dq200605a-eng.htm?HPA=1&indid=3587-2&indgeo=0>

² <https://www.bdc.ca/en/articles-tools/business-strategy-planning/manage-business/pages/10-things-didnt-know-canadian-sme.aspx>

³ https://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr04682.html

⁴ <https://www150.statcan.gc.ca/n1/daily-quotidien/200508/dq200508a-eng.htm?HPA=1&indid=3587-2&indgeo=0>

commercialization of innovations, including patenting of valuable intellectual property generated by successful applicants. IPIC would like to see all provincial governments and the federal government set aside a portion of all publicly funded subsidies and research grants in a similar manner to ensure our public investments in Canadian innovations are protected and commercialized by Canadian companies.

Canadian patent and trademark agents provide key insights into IP strategy

Canadian patent agents have the professional qualifications to draft and obtain valid patents, advise businesses on an appropriate patent filing strategy, as well as ensuring that the IP/patent strategy is aligned with the overall business strategy. This advice usually includes novelty searches to ensure that an invention meets the criteria for obtaining a patent, and also includes discussions around a patent filing strategy to take into account both the immediate and longer-term goals of the business including commercial exports and licensing agreements.

Similarly, Canadian trademark agents have the professional qualifications to advise businesses on an appropriate trademark filing and enforcement strategy. Such advice usually includes due diligence to ensure that a trademark is available for use and registration (i.e. that it does not infringe someone else's rights), and also includes discussions around a trademark filing strategy to take into account both the immediate and longer term goals of the business. Encouraging Canadian businesses to be proactive in seeking strategic trademark advice from the outset would help to stimulate the economy by providing such businesses with a robust brand strategy. Such a strategy can be relied upon as the business establishes itself (or its new product or service offering in Canada), and can continue to be relied upon as the business expands within and beyond Canada.

Encouraging Canadian businesses to be proactive in seeking strategic patent and trademark advice from the outset would help to stimulate the economy by providing such businesses with a robust IP strategy. Such a strategy can be relied upon as the business establishes itself (or its new product or service offering in Canada), and can continue to be relied upon as the business expands within and beyond Canada.

The following are two other programs with proven results which, when adopted, will support Canada's economic recovery.

FIRST PATENT PROGRAM INCENTIVE

A First Patent Program incentivizes businesses to patent their inventions and drives economic growth. For example, 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 grant 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.

In line with this observation, the Government of Quebec launched a First Patent Program in July 2015 to encourage small and medium-sized businesses to seek a patent on their inventions. Quebec's program subsidizes 50% of the incurred expenses, up to \$25,000, for a first patent filing. The initial phase of the program was so successful that funds allocated to the program were exhausted prior to the end of the fiscal period.

Québec's program ran for three years, before being rolled in to a more general "Passeport Innovation" program. Under the new program, the amounts available to a business are greater (up to \$500,000), but is more general, capturing not only intellectual property, but innovation at large.

IPIC advocates for all programs that support innovation, and the subsequent conversion of innovation into IP assets, which increase the value of a business, and provide easier access to capital, growth and highly qualified personnel. However, IPIC specifically recommends governments adopt more targeted measures, for example earmarking funds to support Canadian small businesses IP activity, as opposed to more general measures that target IP promotion and awareness as part of an overall strategy.

Thus, in order to support long-term economic growth and support the establishment of high-growth companies in Canada, we recommend that the government implement:

- a First Patent Program or patent incentive program similar to Quebec's Passeport Innovation, to cover both the initial searching and establishment of an IP strategy, and the drafting and filing of at least a first patent application on an invention.
- However, due to the immense economic downturn caused by the COVID-19 pandemic, we recommend the credit be increased to 100% of incurred expenses, up to \$25,000.
 - We recommend the 100% coverage be made available for expenses incurred until the end of 2021.
 - After that, the government may choose to either retain the 100% coverage, or reduce the coverage to 50% of incurred expenses, or a higher amount.

This will allow small businesses to easily access the program, file patents on their inventions, and grow at an exponential rate compared to companies who do not own intangible assets. It will also provide inventors, start-ups and small businesses with an asset which will allow them to grow in the long-term. A patent incentive program has both a short-term effect, and a long-term reach, by supporting companies now and well into the future.

BRAND STRATEGY AND PROTECTION INCENTIVE

The concept of "innovation" is not restricted to patents; it also extends to trademarks.

While patents protect an invention, which underlies a new product, process, or improvement, trademarks protect the brands that permit businesses to distinguish their products and services from those of their competitors. Consumers rely on brands to identify the source of products or services; it is the brand, or trademark, which will ultimately resonate with consumers, and create market demand. Therefore, registered trademarks are key intellectual property assets for Canadian businesses, and the protection of trademarks is an essential step in commercializing Canadian innovation in both domestic and global markets.

Strong trademarks are essential for domestic and international growth

In today's global economy, having a strong trademark is an essential underpinning to a Canadian company's growth strategy. A strong trademark is one which not only reflects well among consumers from a marketing perspective, but which is also protectable through registrations obtained by following the application processes in various trademarks offices. Canadian businesses benefit from securing

trademark registrations in Canada which can then be used as a springboard to obtain registrations in other markets (a process which has been facilitated by Canada's accession last year to the Madrid Protocol for the protection of international trademarks).

Trademark registrations have far-reaching benefits

There are compelling justifications to encourage and support the efforts of brand owners to adopt strong branding identifiers and to protect them by way of registration. At a most basic level, a trademark registration is a prerequisite to enforcing IP rights in the context of an action for trademark infringement. A strong trademark registration is a tool which businesses can use to effectively carve out their niche in the marketplace by ensuring exclusivity in association with that brand. Strong registered trademarks are also essential in the fight against counterfeit goods sold through both brick-and-mortar and online marketplaces. Strong registered trademarks are important in allowing businesses to guard against improper activities on social media. As an added layer, a trademark registration is required in order to register a brand with the Amazon brand registry to prevent unauthorized online sales in that forum, to combat counterfeiting activities by registering with CBSA and, for many non-resident brand owners, to obtain a domain name registration in the .ca registry.

For these reasons, IPIC recommends that a stimulus program directed to Canada SMEs provide funds to cover costs associated with the following (per trademark):

- Clearance search to determine whether a trademark is available to be used without infringing on a trademark that already belongs to someone else, including professional time spent in reviewing the search results and advising the business on various filing strategies arising out of the search results;
- Trademark application from drafting and filing through to registration, first domestically and then internationally, up to a cap of \$15,000

CONCLUSION

Our profession is strongly committed to ensuring Canada research and business communities remain innovative and creative in the face of adversity. The road to recovery following this pandemic will be a long and arduous one for industry all over the world. However, with smart publicly funded stimulus that focuses on innovative businesses of all shapes and sizes, helping them secure and leverage their intellectual property that road may become a shorter one.

If you have any questions regarding our submission or recommendations, please contact our Executive Director, Adam Kingsley (akingsley@ipic.ca), at your convenience.