House of Commons
Chambre des communes
CANADA

House of Commons Standing Committee on Finance – Pre-budget Consultations 2013

This brief is submitted by:

◉ **an organization** **Organization name:** Intellectual Property Institute of Canada (IPIC)

or

○ **an individual** **Name:** _____

Topic: Innovation and commercialization

*Recommendation 1: Please provide a short summary of your recommendation.

Confidential communications between IP owners and their Canadian patent or trade-mark agents are not protected from forced disclosure in litigation. This places Canadian innovators at a disadvantage in Canadian litigation, as well as litigation in other jurisdictions, such as in the U.S. where disclosure of the communications can be required if the protection does not exist in the country of origin.

IPIC recommends that the government amend the Patent Act and the Trade-marks Act to protect confidential communications between IP owners and their agents from forced disclosure in litigation.

Expected cost or savings: From the pull-down menus, please indicate the expected cost or savings of your recommendation to the federal government and the period of time to which the expected cost or savings is related.

≤$499,999

Immediately

Federal funding: Please provide a precise indication of how the federal government could fund your recommendation. For example, indicate what federal spending should be reallocated, what federal tax measure(s) should be introduced, eliminated or changed, etc.

This recommendation requires no federal funding.

Intended beneficiaries: Please indicate the groups of individuals, the sector(s) and/or the regions that would benefit by implementation of your recommendation.

This amendment would benefit Canadian innovators, businesses in all sectors and universities as well as foreign investors who own intellectual property rights in Canada.

General impacts: Depending on the nature of your recommendation, please indicate how the standard of living of Canadians would be improved, jobs would be created, people would be trained, etc.

For the intellectual property (IP) system to work well, Canadian innovators must be able to have full and frank discussions with their patent or trade-mark agents. The lack of protection for confidential communications places Canadian innovators, businesses and universities at a competitive disadvantage. Many countries, including Australia, the UK and France, have resolved the problem through simple legislative amendments.

Rectifying this problem would allow Canadian businesses to compete on a level playing field and would spur innovation in this country.

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Recommendation 2: Please provide a short summary of your recommendation.

In Canada, companies can permanently lose intellectual property (IP) rights due to unforeseen or uncontrollable circumstances, such as power outages. Rights can also be lost due to innocent mistakes in following clerical procedures. Canada's IP system is unnecessarily unforgiving when it comes to technical errors and force majeure events. These easily-solvable problems raise costs and cause uncertainty for the innovators and a burden on the system. IPIC recommends amending the Patent Act, Trade-marks Act and associated regulations to implement procedures to prevent inadvertent loss of rights.

Expected cost or savings: From the pull-down menus, please indicate the expected cost or savings of your recommendation to the federal government and the period of time to which the expected cost or savings is related.

≤$499,999

Immediately

Federal funding: Please provide a precise indication of how the federal government could fund your recommendation. For example, indicate what federal spending should be reallocated, what federal tax measure(s) should be introduced, eliminated or changed, etc.

This recommendation requires no federal funding. If there are costs in implementing the measures, they should be minimal and would be funded by the fees paid by IP applicants and owners to the Canadian Intellectual Property Office.

Intended beneficiaries: Please indicate the groups of individuals, the sector(s) and/or the regions that would benefit by implementation of your recommendation.

This amendment would benefit Canadian innovators, businesses in all sectors and universities as well as foreign investors who own intellectual property rights in Canada.

General impacts: Depending on the nature of your recommendation, please indicate how the standard of living of Canadians would be improved, jobs would be created, people would be trained, etc.

Many other jurisdictions such as the U.S. have mechanisms to prevent inadvertent loss of rights. Canada lags behind. In some instances the courts are able to resolve the problem but to be forced to go to court to resolve small mistakes is a significant and costly red tape burden. A business that suddenly and unexpectedly loses a patent loses its competitive advantage. This can mean loss of jobs. Correcting this problem and reducing an unnecessary regulatory burden on innovators will help protect the investments of innovative businesses.

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Recommendation 3: Please provide a short summary of your recommendation.

IPIC recommends that the federal government study the costs and benefits of creating an "innovation box" to help spur the commercialization of research. An innovation box is a tax incentive that allows business income from intellectual property (IP) to be taxed at a lower rate than regular income. Similar measures are being pursued in many other countries including the U.K, the U.S. and China. A study would require expertise in tax policy and in IP. IPIC would be pleased to take part in such a study.

Expected cost or savings: From the pull-down menus, please indicate the expected cost or savings of your recommendation to the federal government and the period of time to which the expected cost or savings is related.

≤$499,999

1 year

Federal funding: Please provide a precise indication of how the federal government could fund your recommendation. For example, indicate what federal spending should be reallocated, what federal tax measure(s) should be introduced, eliminated or changed, etc.

Since we are recommending a study and not a change in policy, no funding would yet be required.

Intended beneficiaries: Please indicate the groups of individuals, the sector(s) and/or the regions that would benefit by implementation of your recommendation.

The policies investigated by this study could greatly benefit Canadian innovators in all sectors and regions. It would investigate whether rewarding the successful commercialization of IP - which Canada lacks - would be a wise allocation of federal resources.

General impacts: Depending on the nature of your recommendation, please indicate how the standard of living of Canadians would be improved, jobs would be created, people would be trained, etc.

Since it is only a study into a potential policy change, it would have no such impact in the short term. However, if well designed, the innovation box incentive should maintain and create jobs. This is the goal pursued by other countries.

Please use this page if you wish to provide more explanation about your recommendation(s).

To foster innovation, help Canadian companies compete around the world and attract foreign investment, our intellectual property system must remain competitive. This is no longer the case.

On the protection of confidential communications, our first recommendation, Canada is being singled out in international fora as a problem country.

On preventing inadvertent loss of rights, our second recommendation, recent floods in downtown Toronto and Calgary are a cause for worry given that rights were lost during the 2003 power outage in Ontario (but not in the U.S. where they had a remedy already built into their legislation). The problem can occur when deadlines cannot be met because of generalized power outages or sudden office closures. Also, the recent accumulation of court decisions regarding the lack of remedial measures in our legislation with regard to innocent mistakes could eventually cause concerns to those considering investments in small companies who rely on Canadian patents to compete.

A large amount of work has already been done on these two topics, in Canada and other countries. Implementing these two recommendations would cost nothing to the government and would send a strong signal around the world that Canada is serious about innovation.

The expression “innovation box” comes from the check-box provided on tax forms that allows revenues tied to innovation to be simply identified as eligible to the reduced innovation tax rate. Canada is not as far behind on this issue as it is in the previous two because this is a relatively recent concept. However, because it is already in place in countries like the U.K. and China, and because a bill was introduced in the U.S. Congress in June, now is the time to study this idea before we have to play catch up. In principle, the income and the jobs created by such an incentive should offset the costs. A study would allow a better understanding of the pros and cons.

The Intellectual Property Institute of Canada (IPIC) is the professional association of trade-mark agents, patent agents and lawyers practising in all areas of intellectual property law. 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 in Canada or elsewhere, and also foreign companies who hold intellectual property rights in Canada.

*Please note that at least one recommendation must be provided