



July 17, 2017

By Email

Denis Martel, Esq.
Director of Patent Policy
Innovation, Science and Economic Development

Dear Sir:

RE: Consultation on Canada's new Intellectual Property (IP) Strategy.

This is further to your current consultation regarding Canada's new Intellectual Property (IP) Strategy.

Members of Council of FICPI CANADA have attended the in-person or video conferences of late June, 2017. The present letter is a summary of submissions made during those meetings.

FICPI (Fédération Internationale des Conseils en Propriété Intellectuelle) has a total membership of over 5000 intellectual property attorneys in private practice in over 86 countries around the world.

FICPI Canada is a self-governing national association of FICPI representing the interests of Canadian patent and trade-mark professionals. Our membership includes senior professionals at most major intellectual property firms who are responsible for filing the vast majority of patent and trade-mark applications that are submitted to the Canadian IP Office each year. Our members' clients represent all types and sizes of businesses, including multinational corporations, small and medium size enterprises, and individuals.

In addition to busy professional activities, many of our members take the time to participate in training and continuing education in

intellectual property protection. Our members are held to the highest standards of the profession of industrial property agents and attorneys on an international scale and follow a strict code of professional conduct. We currently have about 100 members in Canada.

We have participated with great interest in the video-conference and in person meetings.

Our views can be summarized as follows:

1. Improving Education, Awareness and Outreach to Improve IP savviness

FICPI CANADA supports all current government initiatives including the CIPO websites video vignettes aimed at teaching the basics of IP. In addition to what is currently offered, FICPI CANADA suggests:

- creating an impetus to modify post-secondary education programs in various disciplines such as law, business administration, finance, engineering, and pure sciences, to comprise formal IP awareness and education courses as a pre-requisite to obtaining a degree;
- the establishment of a yearly 2-3 day comprehensive IP program for business leaders (this could be jointly hosted by FICPI CANADA, the Canadian Government or other IP organizations). Such a program could feature the deconstruction of success stories of businesses having made optimal use of IP in their sector.

2. IP Advice

FICPI CANADA supports all current government initiatives to better guide website or hotline traffic to registered agents and firms. It is important to mention the recent proliferation of non-agents or pseudo agents offering services via the internet or other means. Anyone contacting the Canadian IP Office should be made aware that registered agents are the only professionals competent and authorized to provide agency services and are best equipped to provide IP strategy advice. IP is a complex field and the availability of competent advice is paramount. Registered agents and FICPI CANADA members adhere to professional standards and a Code of Ethics.

3. Improving Access to IP

FICPI CANADA supports government initiatives to disseminate IP information. As such, we support government initiatives to facilitate searching of prior art, pending applications and granted IP rights. However, opinion work such as providing patentability opinions, trademark or design registration opinions or freedom to operate (non-infringement) opinions must be left to registered agents.

FICPI CANADA supports government initiatives to provide financial aid or fiscal encouragement to Canadian business towards facilitating and encouraging IP generation and protection in Canada and abroad. The cost of IP is an important driver in deciding to protect innovation but in return is a driver of growth and job creation in Canada. Helping businesses in the investment stage of IP generation and protection will in turn yield greater benefits.

FICPI CANADA encourages the Canadian Government to survey programs available in other jurisdictions, for example in China and Europe to determine how to help Canadian businesses generate and protect IP as to secure a competitive advantage in the global marketplace. Such a survey could provide helpful suggestions and may trigger new ideas for similar Canadian programs.

FICPI CANADA notes that current patent examination policies in place at the Canadian IP Office may unduly restrict access to IP protection. Of note, computer-related inventions and medical diagnostic inventions are routinely denied patent protection, for reasons inconsistent with decisions of the Supreme Court of Canada. This may create a disincentive for Canadian or foreign businesses to invest or conduct research in these areas.

FICPI CANADA urges the Canadian IP Office to follow guidance provided by Canadian courts on the interpretation of IP Statutes and Regulations and not limit the effect of court decisions to the exact facts that were before the court. Likewise, the Canadian IP Office should not disregard Canadian court decisions based on artificial distinctions such as those found in recent Examiner's training materials that improperly take the position that court decisions apply to granted patents but not to pending applications. Clearly, both pending applications and issued patents are governed

by the same Statutes and Regulations. Patent validity and patentability of pending applications are two sides of the same coin.

FICPI CANADA urges the Canadian government not to do away with the "use requirement" for Canadian trademarks as this would create overpopulation and confusion on the registry of trademarks as to which marks are in use and could deprive access to the registry for genuine users of trademarks.

FICPI CANADA urges the Canadian government to consider the creation of a specialized IP court akin to:

- the UK Patents Courts <https://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/high-court/courts-of-the-chancery-division/patents-court/>
- the German Federal Patent Court (competent to hear both patent and trademark matters)
[https://en.wikipedia.org/wiki/Federal_Patent_Court_\(Germany\)](https://en.wikipedia.org/wiki/Federal_Patent_Court_(Germany))
- the Swiss Federal Patent Court
<https://www.bundespatentgericht.ch/en/about-the-court/functions-jurisdiction/>
- the European Unified Patent Court
<https://www.unified-patent-court.org/>

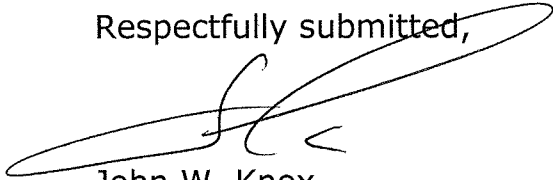
This could perhaps be created as a specialized chamber of the Federal Court in order to provide a judicial system with information technology, procedures and human resources for the most efficient and economical handling of patent cases which are notoriously expensive and time consuming for litigants. Consideration could be given to allow registered agents and attorneys to appear before such court such as permitted for German Patent and Trademark agents before the German Federal Patent Court.

4. Inclusiveness

FICPI CANADA is of the view that IP programs are gender, ethnicity and special interest group neutral. As such, the IP system is open to all. However, financial aid measures or support groups could be put in place to help targeted groups make faster progress in IP generation, protection and business growth.

We thank you for considering our views on this matter and remain, as always, available for discussion. Please contact the undersigned if you have any question or wish to discuss this matter further.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'JK', written over a large, light-colored oval scribble.

John W. Knox,
President, FICPI-CANADA and
Alain M. LeClerc
Past President, FICPI Canada