

KARIMA BAWA

32 West 38th Avenue, Vancouver, BC V5Y 2N4 | karimabawa@shaw.ca

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Mark Schaan
Director General
Marketplace Framework Policy Branch
Strategy and Innovation Policy Sector
Innovation, Science and Economic Development Canada

Dear Mr. Schaan:

Thank you for your invitation to provide input on Canada's proposed IP Strategy.

The majority of issues in respect of which you have sought input have been comprehensively addressed in the following papers written either by Myra Tawfik or myself for the Centre for International Governance Innovation (CIGI):

- *Leveraging University-Generated Intellectual Property to Benefit Canadian Industry* which can be found at <https://www.cigionline.org/publications/leveraging-university-generated-intellectual-property-benefit-canadian-industry>
- *After Failing to Commercialize, Universities Learn to Set Ideas Free* at <https://www.cigionline.org/articles/after-failing-commercialize-universities-learn-set-ideas-free>
- *Addressing a Gap in Canada's Global Innovation Strategy: Capacity Building in IP Literacy, IP Strategy and Access to Affordable IP Legal Services* which can be found at https://www.cigionline.org/sites/default/files/addressing_the_gap_sr_2016.pdf
- *Universities are Failing to Equip Entrepreneurs for Patent Battles* <https://www.cigionline.org/articles/universities-are-failing-equip-entrepreneurs-patent-battles>,

I am also pleased to offer the following additional thoughts in response to the specific questions that have been asked.

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

I believe that improving IP awareness amongst those involved in the innovation ecosystem could be most quickly and cost effectively achieved through on-line education.

An example of an on-line course tailored to teach entrepreneurs and law students about IP and IP strategy is a massive open online course (“MOOC”) called “Foundations of IP Strategy”, which I co-developed with Myra Tawfik. This course was developed for the Centre for International Governance Innovation and such a MOOC or other on-line offering could similarly be offered through CIPO.

Also, some of CIPO’s existing outreach programs could be augmented as follows:

- Providing access to more regional business development officers and augmenting the skill set of the officers with increased IP training
- Increasing the frequency and geographic reach of CIPO events
- Providing case studies and more practical examples about how IP can be used for organizational advantage

Also, CIPO could benefit from adopting aspects of programs offered in other countries that provide more “personalized” support. Some examples of effective programs in other parts of the world include:

- *Patent Pro Bono Program* (U.S.) which provides free legal support for securing patent protections for inventions of under-resourced inventors
- *Pro Se Assistance Program* (U.S.) which provides support and resources to help individuals file for patent protection without having to avail themselves of the services of a lawyer or a patent agent
- *IP Health Check* (U.K.) which is a free online tool, that based on responses to simple questions, will generate a tailored confidential report which will provide recommendations about how to protect and exploit the firm’s IP rights, an explanation behind each recommendation and how best to implement each recommendation including referencing information about resources that may be helpful to implement the recommendations
- *Intellectual Property Explorer* (Australia, Hong Kong and Singapore) which is described as follows:

“...a free, secure and simple online business tool to help you identify and protect your IP assets.

... Intellectual Property Explorer contains a series of interactive diagnostic questions designed to review each piece of intellectual property in your business.

This tool will help you to understand ...what are the processes or knowledge critical to your business success? Are they unique to your business? If so, have you protected them? Do you own the IP you are using? Can you prove it?”

2. IP Advice

One of the biggest challenges that firms have in accessing IP advice is the expense associated with securing such advice. The expense associated with securing IP advice could be mitigated through offerings like the following¹:

- Supporting the establishment of IP law clinics: Law school clinics have been established through certain universities to provide some free IP legal services to start-ups. However, these clinics have very limited presence and many of them do not have the capacity to provide the various transactional services required by start-ups. It would be useful for governments to provide financial incentives for law schools to establish and maintain IP legal clinics throughout the country. These law clinics should ideally be staffed with supervisors that can support students providing a broader range of transactional services.
- Encouraging the adoption of customized programs that offer affordable legal services in IP to start-ups: Law firms are beginning to offer services on a highly-discounted basis to promising start-ups with the hope that these companies will be able to scale and eventually become clients that can afford to pay regular billable hours. One example of such a program is the Norton Rose Fulbright custom program for start-ups which provides a suite of services to promising start-ups at highly discounted rates.

¹ These initiatives are described further in Myra Tawfik's papers "Addressing a Gap in Canada's Global Innovation Strategy: Capacity Building in IP Literacy, IP Strategy and Access to Affordable IP Legal Services" and "Universities are Failing to Equip Entrepreneurs for Patent Battles"

- Access to pro bono legal advice from seasoned IP practitioners: Billing structures for lawyers provide little incentive for IP lawyers to provide affordable legal services to start-ups. Measures to encourage members of the legal profession to provide inexpensive or pro bono transactional services (e.g. CPD credits) to start-up clients could help make services more accessible for start-ups.
- Direct funding from the government for legal services: Funding programs that enable start-ups to get IP legal services for IP filing fees or other IP legal advice would make it feasible for companies to seek out such advice. Such programs could be modelled after Quebec's voucher program which allows companies to receive funding for filing their first patent or could be modelled after the program that exists in other provinces for allowing start-ups to get access to business advice.
- In-house IP specialists at incubators and accelerators: IP specialists housed at accelerators or incubators or regional support centers that could offer transactional legal support to start-ups would be a useful complement to the business specialists that already exist at such centers. These specialists could be funded in the same way that business specialists are funded and to attract senior talent, perhaps the companies taking advantage of their services, could offer stock options to incent senior practitioners to take a more discounted salary in the hope that the stock options may eventually offset reduced salary income.

Another significant challenge encountered by start-ups is getting unbiased IP strategy advice that considers national as well as international factors. In other words, even those IP start-ups that can afford to pay for IP strategic advice, may not be able to access that advice because there is a dearth of qualified Canadian IP strategists. Also, this problem is compounded by business people not understanding enough about IP to be able to ask the right questions or to understand whether the IP advice that they are receiving makes sense in the context of their own businesses.

A starting point to tackle this latter issue would be to provide basic IP education as part of the school curriculum as well as throughout the various post-secondary disciplines. The advantage to this approach would be to: (a) enable individuals to recognize whether their ideas and creations may be able to benefit from IP protection; and (b) provide individuals with the skills needed to properly instruct their IP lawyers and to decide whether and how to implement the advice provided by their IP counsel.

Universities could also offer courses that bring together students of various disciplines. For example, bringing in business students, engineers and lawyers to solve a client-centric problem would provide IP education to the non-lawyers and would allow the law students to apply legal principles to solve a practical legal problem while teaching them how to work practically with people from other disciplines to solve a real-world problem.

Law schools should also all offer IP strategy courses in addition to offering basic IP courses. These courses could perhaps have a practical element built into them so that rather than writing an exam, each law student would be required to come up with an IP strategy for a specific industry problem. This sort of education could also be supported with participation from senior IP practitioners who might also provide a more client-centric perspective.

Finally, universities and other institutions could offer multidisciplinary programs designed to provide specialized training to lawyers, among others, in IP commercialization and in IP strategy. These offerings could also be linked with start-ups to enable these firms to get the benefit of the services of these senior students in the form of a “consulting-type” arrangement delivered on a pro bono basis.

3. Improving Access to IP

Empirical data suggests that Canada’s innovation performance is weak.

This weak performance is attributed in part to the fact that Canadian companies do not invest enough in R&D and in acquiring and protecting their IP which in turn has meant that these companies experience challenges scaling globally and participating meaningfully in international supply chains. Many Canadian technology companies that have sought to expand into foreign markets are thwarted by IP litigation once they reach a certain scale. When this happens, they are often ill equipped to defend themselves because of their own weak IP portfolios and IP strategies. Also, when Canadian companies introduce their products and services into foreign markets, their products and services are “copied” by others without little recourse because Canadian companies are often not optimally poised to assert IP to counteract this copying because of their own weak IP portfolios.

In other words, IP is a significant impediment for Canadians when they seek to enter foreign markets because they often simply do not have sufficient IP to combat "copycats" nor do they have patent portfolios that can be deployed for

defensive purposes when their competitors assert patents against them. Canadian companies need to be smarter about investing in R&D and in learning how to better protect and strategically manage the IP generated from that R&D.

However, achieving results in this regard will take time, and in the interim businesses may be able to leverage the output of publicly funded R&D. This could be facilitated by adopting the recommendations in my papers “*Leveraging University-Generated Intellectual Property to Benefit Canadian Industry*” and “*After Failing to Commercialize, Universities Learn to Set Ideas Free*”.

As for incentives to generate IP, the following are some possible programs that could be explored:

- Providing financial incentives to file for IP protection and for commercialization of IP
- Establishing best practices for valuation of IP in businesses for investors and government entities so that funding decisions can be more easily and reliably made
- Assessing the impact of IP on the valuation of a businesses particularly in the context of acquisitions or in the context of revenue generation so that the value of IP can be broadly appreciated
- Providing tax breaks to offset costs associated with developing IP and filing for IP protection and for revenue generated through IP licensing
- Opening-up financial markets in IP where IP rights, in particular patent rights, can be licensed, sold and purchased (e.g. IPXI in the U.S.)

4. Inclusiveness

To encourage women to participate more actively in the IP ecosystem, it is important to be conscious of implementing express mechanisms to facilitate gender equality. For example, proactive measures should be taken to provide women with mentoring, opportunities to network, to participate in senior leadership positions and to have access to funding.

With respect to indigenous and other communities it is important to engage in a consultative process to better understand the specific issues that they face, and based on the outcome of those consultations, engage in dialogue about the sorts of express mechanisms that could be implemented to facilitate more inclusiveness for these communities.

Thank you for having provided me with the opportunity to share my perspective on these issues. I would be pleased to discuss any of these issues further and to support the development of appropriate solutions.

Yours truly,
Karima Bawa

IP Strategy Advisor
Senior Fellow, CIGI
Scholar-in-residence, LTEC Lab, Faculty of Law, University of Windsor