



June 20th, 2017

Denis Martel
Director, Patent Policy, Strategy and Innovation Policy Sector
Innovation, Science and Economic Development / Government of Canada

Re: Submission to the Consultation Committee on Canada's new Intellectual Property Strategy

Dear Mr. Martel:

As an owner of a high tech firm, I hold patents in Canada and the United States. These are to safeguard our intellectual property (IP) from being used by others. This is key to our company's success.

Offshore competitors are shipping product into Canada that we believe infringes on our patents. When I consulted my IP lawyer on what actions we can take, I was surprised to hear that my only possible action is to take civil legal action at the cost of up to \$1M if the infringers refused to come to a reasonable agreement.

The result is that even after a great amount of effort and funds to create new innovations, we really have no cost-effective and rapid way to protect our position in the Canadian market the way patentees in other countries can. This puts SMEs at a disadvantage in our own country. One wonders whether Canadian patents are worth the cost and effort at all, given the high cost of litigation to protect them in Canada.

For SMEs (small and medium enterprises), the cost to protect is prohibitive. May I suggest it is part of the reason Canada is 14th out of 16 OECD nations for patents filed per capita (Conference Board of Canada, "Patents by Population", 2017). Foreign infringers know IP protection in Canada is weak and take advantage of it. Like most small companies, having to fight this in court uses up resources that would otherwise be used to continue innovation and commercialization. We need alternative mechanisms. Some suggestions:

1. Stopping the import of goods deemed to be infringing on Canadian patents into Canada. Customs services in the United States, the European Union and many other countries have this authority. CBSA does have authority and mechanism to prevent the import of items deemed to be infringing on a copyright or trademark, but there is no such authority to prevent the entry of goods infringing on Canadian patents. Reference: CBSA Memorandum D19-4-3.
2. A mediation mechanism as a specialist patent hearing court that would reduce costs and reduce time to resolution. Patents are granted after already

- undergoing expert evaluation and a period of time in public for comments and rebuttals, why is it necessary to require a full Federal court action to deal with disputes?
3. A defence fund for SMEs who qualify for relief according to a set criteria for Canadian ownership, Canadian operations, actively selling product, and other reasonable criteria.
 4. Patent insurance available to Canadian companies who qualify, with premiums set to reasonable amounts.

I would urge the IP Review Committee consider the provisions carefully in the context of small and medium enterprises. It seems the historical evolution of patent laws in Canada was mainly influenced by large firms with vested interests of high value. However, with the advent of new advanced technologies spawning start-up companies, and the billions of dollars of government support to stimulate invention and innovation, it is also time to bridge the gap in SMEs being able to defend their IP so Canada sees the full benefits of discovery and profitable commercialization.

Best regards,



Tom Tessier, President
Solara Remote Data Delivery Incorporated