

Minister's Roundtable on Intellectual Property
February 10, 2014, Ottawa

On Monday, February 10, Minister Moore hosted a roundtable to discuss intellectual property (IP) issues with sixteen representatives from businesses and industry organizations. The following is a report of the points made by stakeholders at the roundtable.

Introductory Remarks

Minister made opening remarks about the Government's achievements to modernize Canada's intellectual property (IP) regime. He talked about copyright modernization, international IP treaties, and trade agreements. Canada being more assertive with IP rights.

ADM, Iain Stewart, gave additional details on the five international IP treaties.

Minister asked four key questions:

1. What should be our priorities in further modernizing Canada's IP regime?
2. What role can the government play to further support Canadian companies on the international marketplace?
3. How can we attract greater investment and foster more IP development and innovation in Canada?
4. How serious are your concerns about patent trolling and what can we do about it?

Deputy Minister, John Knuble, went over the scene setter. He mentioned the five key themes highlighted in the document.

Roundtable

CISCO generates a lot of patents. Patent trolls are a very large problem, but not in Canada, rather in the U.S. However, there are spillovers in Canada.

Patent trolling issues in U.S. and Canada are different. In Canada we have certain characteristics that serve to limit patent trolling. For example the courts serve us well, relative to the U.S. by virtue of our loser pays approach and no jury trials.

Recommends caution with respect to the possible anti-patent trolling measures proposed by IC for discussion. They might do more harm than good.

The threat of an injunction in a U.S. court or at the International Trade Commission (ICT) is a big barrier for Canadians exporting to the US. Patent trolls in the U.S. leverage these mechanisms to extract money from businesses.

Canadian SMEs first file patent application in the U.S. This makes sense for SMEs that have limited resources: patent first where you can get more bang for your bucks. It is a difficult balancing act that SMEs must achieve.

20(1)(b).20(1)(c)

ITAC

Patent trolling in Canada is not a big deal now, but it could become an issue. It is an issue today to the extent that Canadian SMEs that operate in the US are targets of patent trolling.

The challenge for SMEs is in asserting their patents, not to patent. To address this problem, the Government should offer a program to help give younger companies resources to assert and defend their patents.

More Canadians file US patents than Canadian patents. In Canada, it takes longer than in the US to get a patent granted.

Legal costs are lower in Canada. This needs to be addressed.

Proposed a patent box: tax incentives on patenting and royalty revenues in Canada.

There needs to be more awareness raising among SMEs about the importance of an IP strategy and patenting. IP does create economic value for companies and does create significant wealth for SMEs.

Jim Balsillie

Commend the Government's and the Minister's leadership on IP.

Important for Canada to develop an IP management mentality.

Support the intent of the anti-patent trolling measures proposed for discussion by IC. However, details are important in getting this legislation right.

There are options to incentivize IP development in Canada: SR&ED, NSERC, SSERC, NRC's IRAP.

Funding more IP law programs in university would also help build needed IP capacity and expertise in the country.

Magna does not see a patent trolling problem in Canada. On IP administration we support protecting confidential communications between patent agents and their clients. Advocate a level playing field on privilege. We support the November 2013 letter to the Minister from Pratt & Whitney calling for privilege.

Patent prosecution Highway (PPH) – advocates more partnerships in order to advance our ability to patent more quickly in more jurisdictions.

At CGI, IP-based services and solutions are a key approach to our business.

We support anti-patent trolling legislation in Canada like what is being done in the US. We like the idea of having the courts look at the patent before defendants have to deal with costly discovery.

They support disclosure requirements (RPI) and they like limited discovery.

Cyber-squatting is an issue for CGI in Canada and in the US.

From Bombardier's perspective, patent trolls are not a major problem in Canada. Courts are effective in discouraging patent trolling. However, Canadian businesses are victims of extortion by patent trolls in the US. This distorts the economic value of the patents.

The anti-patent trolling measures developed by IC for discussion will not make a big difference in solving the problem. The US has to act first.

Encourage Canada to put pressure on the US to reform their system to address the patent trolling problem.

There is great capacity in Canada for innovation. Nortel is a good example of Canadian innovation developed here and valued around the world.

Executives in Canada don't have enough IP expertise.

In Canadian MBA programs, students don't hear enough about IP.

More IP education and raising awareness among SMEs about the importance of IP should be a priority. CIPO should do more to raise awareness.

Canadian Chamber of Commerce

We need to define what we mean by patent trolls. We need to be careful not to legislate against legitimate assertion of patent rights.

The anti-patent trolling measures developed by IC for discussion are good, but the application of these measures might not be effective. These measures could create a chilling effect with respect to US trolls.

Making directors personally liable of harmful patent trolling would be more effective.

What resources are available to SMEs to raise awareness? CIPO is doing good work, so are universities. Need to connect these channels.

Regarding disclosure in demand letters of real party in interest, there might be reluctance by bankers and investors to have their involvement disclosed.

Microsoft has a very positive view of Canada's IP regime.

There is not a lot of patent trolling happening in Canada. Canada is a smaller market and Canadian courts are reluctant to grant injunctions, which discourages patent trolling. The system in Canada is working well.

Regarding IP capacity in Canada, there is a shift towards open and fragmented innovation. While Microsoft creates IP we also pay to license others' IP.

Need clear rules and an efficient enforcement regime.

There is a need and thirst for IP knowledge in Canada. SMEs don't have sufficient resources to develop an IP strategy. They need help.

IBM views Canada as an important nod in their business. Canada is IBM's platform for global innovation development. We appreciate Government leadership in Canada to create a favourable business climate.

On IP administration, IBM advocates quicker granting of patent rights in Canada. Improving efficiency in Canada would be very useful – we have many patent applications pending in Canada.

CME is supportive of Magna's call for providing privilege to patent agents. This is a low-hanging fruit.

We also support efforts aimed at getting more economic value from patents in Canada. Supports a patent box or other tax incentives to encourage greater patenting and licensing.

Also advocates measures aimed at commercializing or licencing more university IP in Canada. There is a fundamental problem that needs policy attention: university patents are created following pure research and may not necessarily respond to a real business or market need. There needs to be a better matching of university research with business needs.

CCCE is supportive of Copyright modernization and stronger measures against counterfeit. Also supportive of providing privilege to Canadian IP agents.

A strong IP regime in Canada is important.

Blackberry made recommendations to INDU for greater patent quality at CIPO. Patent quality is important in all jurisdictions.

To prevent patent trolling, one possible measure could be greater mechanisms at CIPO to challenge the validity of weak patents. These measures should be cost effective. Patent trolling is not a major issue in Canada, but it could become one.

Patent trolls stretch patents beyond their boundaries.

Regarding SMEs and IP capacity in Canada, there is a lot of expertise on prosecution and preparing patent applications. Where expertise is lacking is in the assertion and the development of broader IP and business strategies. There is not enough emphasis on this in Canada.

Awareness raising needs to focus on how to use patents strategically to help SMEs meet their business needs. Some businesses, when they do well, forget about their IP. We need to educate SMEs on how to use IP to serve their business needs. They also need to understand that the business environment of a particular industry is important. This dictates the appropriate IP strategy to adopt. It may not be important to patent, but it is nonetheless important to understand the IP environment of your industry.

Cenovus is focussed on oil sands development. Views technology as a driver of our business. It allows us to retain a competitive advantage. We achieved a number of industry firsts, for example moved beyond steam assisted forage. [REDACTED]

[REDACTED]

Our service providers in the US are patenting aggressively. Increases in litigation rates in our industry matches increases in patenting. [REDACTED] We feel the pressure of our sophisticated US competitors on the IP front.

We are seeing patent trolling in our space. We don't think it will be a major issue in Canada given our legal and patent system.

One step to inoculate Canada further is to focus on patent quality. We find there is less access to IP information in Canada compared to in US and EU.

Advocates inter partes post-grant opposition procedures in Canada. Would also welcome measures like in US on fraud on the patent office concept. This is an important remedy for participants in the patent system.

Regarding IP capacity in Canada, comment on patent lawyers...

Canadian Bar Association

Quality patent examination and legal advice is a corner stone of our system.

Restrictions on the ability to enforce granted patents could have unintended consequences. Patent trolling problem seems to exist mostly in the high tech and software industries.

In addressing harmful patent trolling, we need to define patent trolling accurately. Universities are not patent trolls. We don't want to falsely catch legitimate patent owners.

There is a continuum from legitimate assertion to abusive assertion. Even in the US, patent trolling might not be that significant of a problem.

Canadian courts are effective in dealing with these types of frivolous demands.

Have concerns with the confidentiality of demand letter database proposed as part of the anti-patent trolling measures developed by IC for discussion.

Interlocutory injunctions in Canada's federal court are very hard to obtain. That limits opportunities for patent trolling.

Creating a specialized IP court in Canada is another option to consider to address the patent trolling problem.

IPIC

Contrary to some comments made by other participants earlier, the pace of prosecution at CIPO is not slow. There is a multi track process in Canada. You can prosecute quickly in Canada or take longer. Canada's system is flexible.

IPIC has a document that proposes 22 amendments to the *Patent Act* to modernize it. Some amendments are housekeeping and technical matters, while some are broader, e.g. subject matter eligibility.

Patent agent privilege is a real hole in Canada's system. It is a disadvantage internationally for Canadian businesses.

Minister asked who is best placed to deliver greater support to SMEs on IP issues?

One participant answered through the channels that SMEs tap into to get other support, outside of the traditional IP channels. SMEs don't pay attention to IP unless they are forced to. Suggest providing an education program to SMEs using these channels.

Another suggestion would be to create a template audit of a company's patent portfolio that SMEs could use.

Another idea would be a patent infringement litigation insurance program for Canadian companies penetrating export markets.

All stakeholders have to play a role, not just Government. Multi-faceted capacity building is required.

BDC is a place to start, as they lend money to and work with SMEs. It is in BDC's interest to do so as it could help reduce their exposure to risk through their loans.

One challenge with providing greater IP education is that education is a provincial jurisdiction. IPIC could play a bigger role on the education front.

Canadian universities are now putting greater emphasis on licensing their IP. They look at successful US universities and try to do the same.

IP should be a fundamental business skill for business leaders and IP knowledge should be a fundamental skill for lawyers.

Creating a protected ecosystem like Apple did is textbook IP-based strategy. There is not enough of that kind of sophisticated IP strategy in Canada.

IP are intangible assets that are incredibly technical.

Industry associations can play a role, but IP should also be talked up by politicians to raise awareness.

The Minister thanked participants and closed the roundtable discussion.