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Chair

Mr. David Sweet

Standing Committee on Industry, Science and Technology

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● (0850)

[*English*]

The Chair (Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC)): Good morning, ladies and gentlemen.

[*Translation*]

Good morning everyone.

[*English*]

Welcome to the 30th meeting of the Standing Committee on Industry, Science and Technology.

We have witnesses before us. We also have two items of business, and it looks like we have agreement that we'll leave the estimates and the moving of a possible motion to the end of our meeting. Our meeting will end at 10:15, at which time we'll deal with the estimates and a possible motion from a member.

Now I'll introduce the witnesses who are before us. From the Canadian Intellectual Property Office, we have Sylvain Laporte, commissioner of patents, registrar of trade-marks, and chief executive officer; Agnès Lajoie, assistant commissioner of patents; and Konstantinos Georgaras, director of policy, international and research office. From Industry Canada, we have Gerard Peets, senior director, strategy and planning directorate, strategic policy sector; and Denis Martel, director of patent policy directorate, strategic policy sector.

Is there just one person with opening remarks, or do we have more than one person with opening remarks this morning?

Mr. Sylvain Laporte (Commissioner of Patents, Registrar of Trade-marks and Chief Executive Officer, Canadian Intellectual Property Office, Department of Industry): I'll be doing the opening remarks.

The Chair: Okay, then, Mr. Laporte, please go ahead.

Mr. Sylvain Laporte: Actually, we have two presentations that we'd like to run you through.

The Chair: How long do you think you need, Mr. Laporte?

Mr. Sylvain Laporte: We were given 10 minutes each.

The Chair: Okay, please go ahead.

Mr. Sylvain Laporte: Is that still appropriate?

The Chair: Absolutely.

Mr. Sylvain Laporte: Good morning, Mr. Chairman, ladies and gentlemen.

Thank you for the opportunity to speak to you this morning about intellectual property. We have two presentations.

Intellectual property is managed in the government through two organizations. The industry department, which is represented by Mr. Peets and Mr. Martel, do the policy development. The three of us who come from CIPO do the administration of intellectual property. CIPO's a special operating agency of the department, so we still work together.

The presentations this morning are split in two, because there is a logic to it. What I'd like to do is start with Mr. Peets' presentation, because there's a logical flow from policy to administration. So if you are okay with that, we'll give the microphone to Mr. Peets.

Mr. Gerard Peets (Senior Director, Strategy and Planning Directorate, Strategic Policy Sector , Department of Industry): Thank you very much. It's a pleasure to be here today.

We spend our days where I work thinking about IP, thinking about how it affects the marketplace, and thinking about how it can be improved, so we really welcome the work of the committee in this area.

I'd like to start by just talking about the IP framework, what it is, and why it's important.

IP is a marketplace framework that aims to spur innovation and creativity, and this is done largely by granting exclusive economic rights. It's also about supporting the dissemination of knowledge. For example, inventors who file patents not only receive rights over their invention, but also consent to their publication. It also recognizes that follow-on innovation is beneficial and useful. The IP regime sets out the terms under which a person can make use of a rights holder's creation or invention.

I think a theme that often comes up in IP is that of balance. IP grants exclusive rights as an incentive to innovate and to create, but these rights are limited to provide for access in the dissemination of knowledge.

The first area of IP that I'll touch on is that of patents. A patent gives its owner a time-limited, exclusive right to prevent others from making, using, selling, or importing the patented invention without permission. Patents essentially provide a market space in which an inventor can recoup their costs without worrying about a competitor copying it. Patents can be licensed to generate revenue. They can be sold and they can be assigned. They're particularly valuable in businesses that have high upfront costs, long product lives, and low imitation costs.

Turning the page to copyright, which is the second element, like patents, copyright exists to provide an incentive to create. It's foundational for a number of important sectors, including publishing, film, music recording, photography, and software, to name a few.

Turning to trademarks, a registered trademark gives its owner an exclusive right to prevent others from using an identical or confusing mark. In contrast to copyright and patents, which are there to provide an incentive to create, trademarks let firms distinguish and identify themselves. In this way, trademarks are essential to ensuring that products are what they say they are, which is a vital ingredient to inform consumer choice. By supporting branding, trademarks are a means of capturing value of an intangible asset for firms as well.

Lastly, to touch on industrial designs, a registered industrial design grants a right on a shape or style of a product, preventing imitation by competition. Like patents, registered industrial designs can be used to ensure that the benefits from upfront investments of time, creativity, and money are realized by the person who made them.

I will now turn to a bit of the policy discussion surrounding IP. I'd like to focus on three factors that I think drive how we think about IP. The first is the simple fact that IP matters now more than ever before. The Conference Board of Canada in a recent study reported that for S&P 500 firms in 1975, intangible assets—a large part of which are IP—accounted for 20% of asset value. In 2008, that figure is 70%. Also, we're seeing the value of patents as evidenced by recent major transactions. The $4.5 billion sale of Nortel patents to a consortium involving Apple, Microsoft, and Research in Motion is one example, as is the sale of Motorola to Google for $12 billion. So IP matters more now than ever before.

The second factor is that IP policy is by definition a global discussion. While IP rights are provided for under domestic laws, trading nations have been working towards broad consensus in a number of areas. Norms and standards have developed. They've been enshrined in the World Trade Organization under the TRIPS agreement, and the World Intellectual Property Organization has been formed, which is a consensus-building body under the UN, and Canada is a part of that.

● (0855)

The final point, which is fairly self-evident, is that IP is a very complex area of policy.

First, it exists as one policy that supports innovation amongst a suite of other policies. For example, competition is also very important to ensuring an innovative and productive economy. There are many stakeholders in each of the areas of IP, with many views, which often conflict. The administration of IP is also key towards realizing its benefits.

I'll now give you a bit of a sense of some of the topline messages we're hearing from stakeholders. As part of our work, we do maintain relationships with stakeholders such as businesses, academia, and advocacy groups to understand their views and where they're coming from. We also undertake research aimed at gathering evidence to support eventual policy-making.

What we have heard from many is that copyright modernization is long overdue. There's a hope among many that it will soon be a fact.

We've also heard from Canadian business that their next major priority is buttressing IP enforcement, including at the border.

Beyond that, we're seeing an emerging policy debate crystallize around some key questions. I've phrased these as questions because these really are issues that we are coming to grips with ourselves. We don't have answers. But I offer these up as potential issues that you might want to consider as you hear from witnesses and consider this matter.

Are patents being effectively commercialized in Canada? What are the implications of new, strategic uses of patents, such as things like defensive patent portfolios, patent thickets, and non-practising entities?

For exporters, are the patent regimes in our target markets sometimes as important or more important than our own patent regime?

Are Canadian SMEs well served by the patent regime?

Finally, are there issues that we need to consider in changing how we administer IP or enforce it in the courts?

I'll wrap things up by touching on Industry Canada's role. My group is in the strategic policy sector. Our core function is providing policy advice to the Minister of Industry on things like legislative and regulatory modernization.

I have responsibilities as acting director general in a variety of areas of policy, including insolvency, investment, and all the areas of IP. As part of our work, we engage in international forums, such as the WIPO, working with our colleagues, and we support international negotiations. Our recent priority has very much been copyright, with successive bills and a major consultation that have occupied a lot of our time.

Other colleagues in the department include those in the science and innovation sector, which is the lead for coordinating federal science and technology policy. On issues such as technology transfer, commercialization, and the use of government IP—the IP that the government owns—science and innovation are the lead.

Finally, you'll be hearing from my colleague Sylvain, who is the head of the Canadian intellectual property organization, which is the body that administers IP in Canada.

To sum up, thanks again for inviting me. This is an important issue for the Canadian economy. We're very excited that the committee is turning to it. We look forward to monitoring the process as it goes on and certainly to helping in any way we can.

● (0900)

The Chair: Thank you very much, Mr. Peets.

On page 8, where you asked what are the implications of new strategic uses of patents, you used the term “patent thickets”. Just to be sure that everybody is aware of that term, could you quickly give us a definition?

Mr. Gerard Peets: Sure. Sylvain can perhaps...?

A voice: You're taking my first question—

Voices: Oh, oh!

The Chair: I apologize. I just thought it would be good to clarify it if there are going to be other....

Mr. Gerard Peets: This is the practice of a firm developing multiple patents—it could be in the hundreds—surrounding a core technology. The example that's typically given is the cellphone, which can be the subject of a myriad of patents that cover various aspects of the technology. Some firms will use these as a defensive means of protecting their invention.

The Chair: Thank you very much, Mr. Peets.

Mr. Richardson.

Mr. Lee Richardson (Calgary Centre, CPC): Thank you, Mr. Chairman. I was going to ask the same question.

There were two other points you made at the same time that you mentioned thickets. You mentioned two other examples. While we're at it, could you explain those as well?

Mr. Gerard Peets: Sorry, you're reminding me how we're in a little world here and we get used to certain things, one of which is non-practising entities. This is a reference to firms that obtain a patent pool—a bunch of patents—and their business is to monetize those through lawsuits, through litigation, through settlements, rather than actually inventing or marketing the things that are covered by the patents.

The Chair: Thank you very much.

We now move to Mr. Laporte, please.

Mr. Sylvain Laporte: Thank you.

Now we'll talk about the administration of intellectual property. As I've mentioned before, we belong to the Canadian Intellectual Property Office, Canada's administrator for IP.

We have a very specific role, basically to examine applications for IP and to grant or register rights. Part of that role also has us manage the first appeals process. We do that for trademarks through our Trade-marks Opposition Board, and on the patent side, through the Patent Appeal Board.

Once we've exhausted those types of administrative activities, the only way to appeal some of our decisions is through the Federal Court.

Our mandate is very clear. We're there to deliver high-quality and timely IP products and services to our clients. We also have a mandate to improve awareness of IP with Canadian companies, and we have an international role to play with the World Intellectual Property Organization.

We've given you volumes for the year 2011-2012. It has been a slower year than usual because of the recession. We get, on average, about 100,000 applications for IP in a given year. It takes many years to go through the process, and what you see on the second line of the table on slide 2 is the number of grants that we will actually allocate in a given year.

If you look at the column for patents, you'll see that we've received about 37,000 applications. Those will not be processed for a number of years, but of the patents that we've processed—which we received a few years ago—we've actually granted 20,911.

What I'm also showing you here is the timeframe required to process an application from the day we receive it to the day a decision is made to either grant or not.

Something to note here is that on the patent side, we're showing 78 months. I just want to highlight the fact that in Canadian patent law, a user who files has up to five years to ask us to treat their application. About 25% to 30% of them wait for the fifth year before they ask us to do that. So this is not a record of our performance, because the users actually have quite a bit of leeway with respect to when they want to start the process. So this circumstance creates a situation of “patent pending” for the duration of the waiting period.

What I'd like to look at now is the global perspective of the IP situation. The three lines on the graph indicate that each type of the three main IP products has been experiencing quite a bit of growth over the last few years. All three of them are growing. The main reason for their growth is the BRIC countries, and in particular China, which has been pursuing a strategy of incremental filings for the last five or six years. In fact, China has seen a sevenfold increase in the number of their applications, so that has had quite a global impact on the IP community.

Now, for the Canadian picture, what I'm showing you in the graph at the top of the page are the Canadian applications. I've broken them down into the two types that we see. The dash lines represent Canadians applying for IP abroad, outside Canada. As you can see, they have experienced quite a bit of growth.

The line at the bottom shows the number of Canadians who apply in Canada. Clearly, we are in a situation where Canadian applicants are filing outside of Canada first.

The table at the bottom is not about applications now. It's about patents that have been approved, so patents that are in force. The first two lines represent the Canadian experience. The first line in the table, “Canadian patents in Canada”, shows the number of Canadians filing in Canada. As you can see, from 2005 to 2010 there has been substantial growth in that.

The number for Canadian patents abroad is substantially higher than the number of patents in Canada, and there's quite a bit of growth there too. In fact, Canadian patents in force have been growing at about 30% since 2005.

What's interesting here is that when we compare the number of Canadian patents in force to the number for the worldwide picture, you can see at the bottom of the table that Canada owns about 1% of patents globally.

● (0905)

We saw a slight decrease from 2006 to 2010. It's relative to global growth, but in essence, Canadian growth kind of meets global growth. We're within a few decimal points. We're losing a little bit of ground, but not too much. We're maintaining the global growth momentum here in Canada.

Because Canadians apply globally, it means that foreigners also apply globally.

I just want to highlight some of the peculiarities that we're seeing here in Canada with respect to the distribution of domestic IP and foreign IP. If I look at the patent filings, in terms of the 36,900 applications we receive in a year, 88% are from foreigners and only 12% are from Canadians. That makes us, in Canada, an office of second filing.

Offices of first filing, such as the United States, China, Korea, and the EU, will actually receive patents before we will, making them an office of first filing. That is usually explained by the interest companies have in filing in their biggest market first. Then they come to offices of second filing. Offices of second filing would include Canada, which is one of the largest in the second filing group, the U.K., Australia, and countries that are usually close to us, from that perspective.

To give you an idea of how many domestic patents the U.S. receives, where we are at 12%, the U.S. IP offices receive about 52% of their patent applications from Americans themselves.

Clearly IP is a global play, particularly with respect to its administration. From an administration perspective, it is essential for us to be well plugged in to other countries and that we spend a great deal of effort harmonizing our intellectual property activities so that it's a lot easier for Canadians to file abroad and a lot easier for foreigners to file in Canada. If that balance is not well achieved, it doesn't make Canadian companies very competitive and it makes it hard for foreigners to invest in Canada.

We have quite a number of activities with the World Intellectual Property Organization. We collaborate on quite a number of committees with them.

We also engage in bilateral agreements. One in particular that I'd like to bring to your attention is something called the patent prosecution highway. We basically give credit for the work done by another country. We have a bilateral agreement with the Americans, for example. If the application that comes to Canada is the same as one filed in the U.S., instead of taking 78 months to process, on average, it takes about six to 12 months. So we greatly accelerate the granting of the patent. That puts the company looking at this service in a very good position to commercialize its goods in Canada a lot sooner.

I'd just like to highlight some of the contributions CIPO makes to innovation and to helping SMEs, in particular, leverage the IP framework to their benefit.

In terms of what we do when we look at granting IP rights on a timely basis, we keep in mind that quite a number of our applicants actually are looking to commercialize their goods. So the sooner we can get to a decision, the better it is for them in terms of taking their goods to market.

Second, the principal thing we do when we examine a patent application, for example, is look at the scope. Typically we get applications that ask for a big scope, because if we grant it, they'll have a monopoly on a whole lot more play.

What we do, through a number of intricate cycles, is bring the scope down to the essence of the innovation, or the invention in the case of a patent. When we take that play from what we typically receive down to what we typically grant, we're looking at the quality of the patent. That's what we call the quality or the “scoping” of the patent. When we don't scope properly, what you will see is a situation where there's no clarity in the market. That will usually lead to litigation.

● (0910)

When companies take each other to court they're using that money, but not necessarily for the purposes of developing new products or for capital investment. We want to make sure that we scope the applications and grant the patents in the best way possible to make sure that we bring certainty to the market.

The third thing that I'd like to bring to your attention with respect to our contribution to innovation is basically what we call incremental innovation. When someone applies for an IP the value proposition is that we will exchange with you, Mr. Inventor, in the case of a patent, a 20-year monopoly in exchange for public disclosure. The public disclosure then is, in essence, to be used by other innovators and other inventors. If the first applicant with the first idea actually commercializes their idea and they create jobs and build a plant there's economic growth and that's good. From an incremental perspective, now if someone takes the idea, reshapes it, adds something to it, and they get another patent and they create jobs in a plant and something else, that's economic growth as well. So that incremental cycle is really at the essence of the value proposition that we look for.

In conclusion, clearly the administration of IP continually evolves. It is truly a global play. I want to leave you with the notion that at CIPO we are quite committed to making sure that we are always going to be in line with helping the innovators out there in Canada.

Thank you, Mr. Chairman.

The Chair: Thank you very much, Mr. Laporte.

Everybody was well educated on the two presentations.

We'll go now to our first round of questioning with Mr. Braid, for seven minutes.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you very much, Mr. Chair.

Thank you to all of our witnesses for being here.

Thank you to Mr. Peets and to Mr. Laporte for two excellent presentations. I think you've really helped to kick off our study very effectively. These presentations have underscored not only how interesting this subject area is but how important it is to the Canadian economy. This committee has a real opportunity to help shape the policy process with the objective of strengthening our IP regime in this country. Thank you for getting us started so well.

Actually, I had a hard time narrowing down the questions I want to ask.

Mr. Peets, I'll start with a few questions for you.

You talked about stakeholders within the IP landscape. At a high level, could you explain and describe who those stakeholders are?

Mr. Gerard Peets: Sure. To some extent, different parts of IP have different stakeholder groups, and then to some extent, they share them in common and span the groups. For example, the copyright debate is often framed in terms of the copyright rights-holder businesses, and those are some of the businesses that I mentioned earlier: the film industry, the publishing sector, the recording industry, photographers, etc. There are individual artists and individual creators, and they are often bundled as the rights-holder groups.

On the other side, in the copyright area, there's what we generally refer to as the user group—users and consumers. That represents individual people who buy copyright material, that represents institutional users such as the education sector, and that represents advocate groups for user and consumer rights. Then in copyright there's also a group that can be referred to as intermediaries. To the extent that copyright, in particular in a digital environment, has strong linkages with the use of the Internet, ISPs and things like search engines are important stakeholders in that group. There are also broadcasters and others.

In the area of patents, any business that involves invention and the use and marketing of invention has something to say about patents. We often say that the kinds of business sectors that depend most on patent are those with high upfront investments, long product times, and low costs of imitation. An example would be the pharmaceutical sector, but also the high-tech sector. Although the high-tech sector has some shorter product development times and shorter product lives, patents are nevertheless a big issue for them as well, and there's a different range of issues that presents itself there.

Turning to trademarks, there are businesses of all kinds. Every business needs to identify itself and needs a means of identifying its products, and businesses are concerned about the issue of counterfeiting and about the issue of enforcing the trademarks.

So that's a fairly widely felt priority in the business community, and that's the main thing on trademarks.

● (0915)

Mr. Peter Braid: Thank you. We've touched on this issue of patent thickets already. What is it about the current environment that has created the need for sectors to create patent thickets, and what can we do about it?

Mr. Gerard Peets: I think my colleagues will want to jump in on this one too, if that's okay.

I could perhaps get started by offering that patent thickets, as a phenomenon, aren't novel to the current day and age. They are emerging as an issue in some sectors, and we're hearing from businesses that they are an issue. It has been noted that patent thickets arise when there is an upsurge in innovation in a particular area.

We understand the first patent thicket, in fact, revolved around the sewing machine, and the solution in that case revolved around bundling things together so as to rationalize and condense it. But the fact is, when there are a lot of inventions happening, and multiple inventions go into a single product like a cell phone, this is a phenomenon that we tend to see.

Mr. Sylvain Laporte: I'd like to add that patent thickets happen principally in the States and in the U.K. where they allow patenting of software, where things tend to move quite fast and it's very important to secure your position in the market, and they do that a lot through IP.

We don't see a lot of thicket evidence here in Canada because of the laws that we have. But because of the foreign nature—as I've explained before—of our businesses, a lot file in the U.S. where there are thickets. So although it's not happening in Canada, it's still quite a concern to businesses in Canada that file outside of the country.

● (0920)

Mr. Peter Braid: Mr. Peets, I think one of your first statements right at the beginning of your presentation was that you and your team spend a lot of time thinking about how IP can be improved in Canada. So, how can IP be improved in Canada?

Mr. Gerard Peets: I could answer this by going back to some of the things that we hear. As I mentioned, the most widespread feedback we get from a variety of people is that copyright modernization is overdue. So that's been a priority, and that is currently the priority.

The second thing is that Canada recently signed the Anti-Counterfeiting Trade Agreement, which relates to the enforcement of IP rights. The business community has identified IP rights enforcement as a priority. I think you'll probably be hearing that from witnesses, down the road.

The Chair: Thank you, Mr. Peets.

I'm sorry for the time that we are always restrained here.

Now to Madam LeBlanc, for seven minutes.

[*Translation*]

Ms. Hélène LeBlanc (LaSalle—Émard, NDP): Good morning, and thank you all for being here to educate us on this topic. It is quite interesting.

Mr. Laporte, as far as patent applications go, you said that Canada is one of the countries where people go—

[*English*]

—"as a second filing". That is what you had mentioned.

[*Translation*]

Could you explain the difference between a first filing and a second filing in terms of patents?

Mr. Sylvain Laporte: When a business owner is considering spending a lot of money, especially if theirs is a small business, they look at where they should file an application first. Their first consideration should be where their biggest market is. They know it costs between $20,000 and $25,000 to file an application. If a small business takes in $500,000 to $1 million, some $20,000 or $25,000 is a pretty hefty sum. The owner's first consideration has to be the markets where they want to sell their goods or services.

In Canada and elsewhere, people file applications in the biggest markets first. That is not unique to Canada; we see it in other countries as well. Canadians will file in the U.S. or Europe, for instance, before filing in Canada. They can apply in a number of countries. But what it comes down to is money, resources. When a business has limited resources, its top priority is to protect the market where its goods are going to sell. That is why a business would go somewhere else before Canada.

Ms. Hélène LeBlanc: Basically, it boils down to the type of market we offer, and not so much a bad intellectual property regime.

Mr. Sylvain Laporte: Precisely.

Ms. Hélène LeBlanc: Will companies that apply first in other countries, then apply for a patent in Canada, or will they opt for another market?

Mr. Sylvain Laporte: It is entirely up to them.

Ms. Hélène LeBlanc: I wonder about something else. Intellectual property and innovation often go hand in hand; in fact that is, to some extent, the objective of our study. The question has been asked as to where Canada stands in the innovation rankings.

Would you say that Canada's industrial base is not the place where people file intellectual property applications? We do a lot of resource development, and we have a manufacturing base. Would that be why we don't see intellectual property developing here or are there other reasons?

Mr. Sylvain Laporte: That's an excellent question. Canada's industrial base is a bit outside my area of expertise. I can tell you that, in terms of intellectual property filings, we recently received numerous applications from Alberta in the field of natural resource development. There isn't really a limit or a noticeable interest, one way or the other, from one industry to another in Canada.

Canadian companies were surveyed about intellectual property in 2008. It turned out that some 80% of companies had not had any intellectual property filings because they didn't know what it was all about. They were asked if they knew what intellectual property was, and they answered "no". They were also asked if they knew what a patent was, and they said "yes". What the survey told us, then, was that we needed to do a better job of educating Canadian companies about how to use intellectual property. We have been working on that for a number of years now. People in Canada are somewhat in the dark when it comes to intellectual property.

● (0925)

Ms. Hélène LeBlanc: Would you say that some companies are concerned about taking on something of this nature? Does the process scare some companies off?

Mr. Sylvain Laporte: Round tables are currently under way with business owners. We just finished one in Quebec with a business owner who had used the IP regime properly. She told us that business owners were quite apprehensive about the whole thing because it takes a lot of money and because they have heard all kinds of stories. They are under the impression that they can still be taken to court even if they have a patent, and that if that were to happen, it would cost them even more. So why bother at all? These sorts of fears prompt each business owner to make a decision with their own situation in mind.

Ms. Hélène LeBlanc: Could you provide the committee with the survey you mentioned?

Mr. Sylvain Laporte: Yes, that would not be a problem.

Ms. Hélène LeBlanc: You said it's from 2008.

Mr. Sylvain Laporte: Yes, 2008.

Ms. Hélène LeBlanc: Do you have any plans for another one? Do you intend to do it regularly, asking companies about the matter?

Mr. Sylvain Laporte: To be honest, it's a bit tough to carry out such large-scale surveys. Right now, our focus is on round tables. Several rounds of talks with business owners are planned. We talk to business owners who are innovating but have not used the intellectual property regime.

We also talk to business owners who are innovating and have used the regime. We want to know whether they received satisfactory service and whether their objectives were met. After the IP rights were granted, did the patent or trademark generate the benefits these businesses were expecting?

[*English*]

The Chair: Thank you very much, Monsieur Laporte, Madame LeBlanc. It's a full seven minutes.

Now we'll go on to Mr. Lake for seven minutes.

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): It's going to be tough to ask all my questions in seven minutes.

I'm just trying to understand the chart on slide 4. I'll focus on the second and third rows of the chart where it says, "Canadian patents in Canada" versus "Canadian patents abroad". I'd just like to get an idea of what that's a function of. When you first look at it, it looks like for every one Canadian company filing a patent in Canada, there are four that are filing patents abroad. Or is it just that for every Canadian company filing a patent in Canada, they are also filing in four other countries? I just would like to get a clarification on what those numbers mean.

Mr. Konstantinos Georgaras (Director, Policy, International and Research Office, Canadian Intellectual Property Office, Department of Industry): Thank you for the question.

Indeed, for this particular number here, we do rely on the World Intellectual Property Organization to provide the figures. We do know well the number of patents within Canada. It's difficult to track how many Canadians are applying outside. So the World Intellectual Property Organization does survey all other intellectual property offices and provides this number.

These are the number of grants that are currently in force. There is some double-counting that is going on here. So there are some numbers that identify both a patent within Canada and a patent abroad, but they are indeed the same patent, the same idea. There is subsequent work that the World Intellectual Property Organization is doing to help eliminate this double-counting, and that information is available.

● (0930)

Mr. Mike Lake: I would imagine that your advice to a Canadian company talking to you would be to file a patent in Canada, but to also file for that same patent in the U.S., the U.K., China, and India, if they plan on actually going global with their product. Is that right?

Mr. Konstantinos Georgaras: That is entirely a business decision. We do not provide that advice, but it is driven by the size of market, as we have heard.

Mr. Mike Lake: Okay.

On the bottom of that chart, you'll see the numbers go from 1.11% down to 1.00% from 2005 to 2010. If you were to adjust those worldwide numbers for China—you talked about the increasing number of patents for China—would that look more even? Has that been done?

Mr. Konstantinos Georgaras: I do not have the figures currently, but if, as you've mentioned, you remove the surge in Chinese applications, you will notice that the number will be rather stable and that, indeed, as part of the total stock of patents in force, the Canadians have held their own. It really is just a matter of the denominator growing.

Mr. Mike Lake: Would it be possible for you to provide that information to the committee at a later date? I'd be curious to see it. It's a pretty simple calculation, but it might affect the look of those numbers.

Mr. Konstantinos Georgaras: We can certainly do that.

Mr. Mike Lake: Perfect. That would be great.

I want to get to the process, in a sense, of applying for a patent and the impact, or what it means, for a business. I don't know enough. I'm not an expert who can understand this process you talked about in which a company applies for a patent, there's disclosure of information to kind of have that balance you spoke about, and then another company can build on that. How does that work? To what extent can another company innovate further and then get another patent? What are the parameters around that?

Ms. Agnès Lajoie (Assistant Commissioner of Patents, Canadian Intellectual Property Office, Department of Industry): I'll give you an idea of the process. An applicant files in Canada and applications are laid open 18 months after. So the information on the invention is open to the public. But at that time the patent is pending, so there's some uncertainty as to whether or not it's going to end up as a patent. Eventually for a firm to use the information and develop further, there's some kind of a risk there, because if it eventually becomes a patent...you don't know.

What happens is that applicants, as Sylvain mentioned before, have up to five years to request examination, so the application that is pending is eventually examined by the patent examiners to determine whether it complies with the requirements of the Patent Act. This process depends—because it's an intuitive process in the sense that sometimes an application can be allowed and granted eventually when it's examined the first time. But there can be many multiple iterations between the patent examiners and the applicant to determine the scope and whether or not it meets the requirements of the act. During that period of time, companies interested in the invention may keep an eye on the invention and the evolution, but if they use it, there's always a risk, up until they know for sure whether it's a patent or the application is abandoned or not granted to the applicants.

I hope this answers your question.

Mr. Mike Lake: It kind of does. I got a little more information. It's like drinking from a fire hydrant.

I guess the question I would have is this. What information is available? When you say that they file and the information is available, what information do you mean?

Ms. Agnès Lajoie: It's required under the act that the invention be described to allow a person skilled in the art to reproduce it. It is very important, in fact, to make sure that people in the field with sufficient knowledge can reproduce the application.

Mr. Mike Lake: They could reproduce it, but they can't use an identical product. To what extent can they improve on that product to the point where they could use it?

Ms. Agnès Lajoie: Again, it's incremental. It depends. They're minor improvements.... Each case is different. What happens, also, is that the licensing discussion can happen. So if you incrementally improve an invention, you may be able to use that improved invention based on the agreement you have with the pioneer of the first invention. Each case is so different. There are different nuances and different levels of improvement.

Mr. Mike Lake: If you get a new patent on that incremental improvement, does that prohibit the original company, who might have been working on a similar improvement from using that as well?

● (0935)

Ms. Agnès Lajoie: It could potentially.

Mr. Mike Lake: Right. Okay.

I could ask so many more questions, but I'll close.

Gerard, you've given us some questions we might consider asking as we move forward in this study. For example, as we're looking for independent experts to invite to the committee, what organizations and what people are out there in Canada who could be considered independent experts we might want to consider inviting?

The Chair: You would have to submit that to us in writing, or at least mention it to somebody else who questions you at a later time. I'm sorry. Again, we have to stick with the time.

Now on to Mr. Regan for seven minutes.

[*Translation*]

Hon. Geoff Regan (Halifax West, Lib.): Thank you, Mr. Chair. I also want to thank the witnesses.

My first question is for Mr. Laporte.

[*English*]

I have a very practical question based upon a problem from a constituent of mine who called my office in view of the fact that, in Nova Scotia, massage therapy is not regulated. The provincial government hasn't passed the laws that say you have to have the body and be a member of it and so forth. There are three recognized professional associations.

Whereas in Ontario it is regulated by the provincial government, and the College of Massage Therapists of Ontario trademarked the phrases "massage therapist", "registered massage therapist", and "therapeutic massage". It licensed one of the three associations in Nova Scotia—I think you see where the problem is starting to develop—and the others can't use those words. How is it that a body that is limited provincially can obtain an official mark for a profession that applies nationally? This jurisdictional issue is very problematic, it seems to me.

How does it have the right to license an official mark to organizations in different jurisdictions who have jurisdiction over this kind of thing, over what they're doing, over this profession? It isn't federal. Are there any avenues for objection to an official mark or the licensing thereof across the country? I see a real problem with having given a trademark in this way that can apply nationally.

Mr. Sylvain Laporte: That's a good question. The answer is quite complicated. We can probably speak off-line if you want to look at the details. I want to leave you with a few tidbits of information.

One, when we grant a trademark it has a national scope. Two, official marks are trademarks that we grant when there is, for example, a government requester, and those we approve by default. So there are very few tests to be done for any kind of mark related to a city, an official organization, a coat of arms for *les Chevaliers de Colomb*, or something of that nature. By law they're official marks and they have to be approved. It may cause some issues.

Three, when we look at approving trademarks, even official marks, we try to ensure we don't give national coverage to one region that may infringe on another region's similar demands. So without knowing the details, I would like to think that when we approve the trademark in Ontario that the word "Ontario" appears somewhere to limit the trademark.

Hon. Geoff Regan: My understanding is that it doesn't. They have the words "massage therapist", "registered massage therapist", and "therapeutic massage" for Canada, and yet it's the Ontario College of Massage Therapists. It's very problematic, obviously.

Mr. Sylvain Laporte: We need to look at the details for that one, unfortunately.

Hon. Geoff Regan: It seems odd to me. I don't know if it's a problem. You don't have the option, I presume, of issuing an official trademark that isn't national in scope, is that right? Or can you say, we're going to give it to you, but only limit it to the jurisdiction in which you are authorized by your provincial government?

Mr. Sylvain Laporte: I'm not aware of such a limitation.

Hon. Geoff Regan: You don't have that option?

Mr. Sylvain Laporte: No.

Hon. Geoff Regan: It seems to me you should have that option, arguably. At least it's certainly worth examining. The alternative is obviously not to issue it at all because of the problem that's been created in a case like this. Is it possible to retract a trademark if you have a problem like this and you recognize you may have made a mistake?

Mr. Sylvain Laporte: I'm getting into a bit of unfamiliar territory with respect to the Trade-marks Act.

● (0940)

Hon. Geoff Regan: What mechanism is there to protect patents that are developed in Canada, perhaps with a lot of help from the Government of Canada, and therefore the taxpayers? For instance, the Nortel patents—they're made available and they're sold internationally to a company like Ericsson, and therefore not available in a reasonable way to a company like RIM. Do you have any role in that situation, or is that the role of the government itself under the Investment Canada Act?

Mr. Sylvain Laporte: We don't play a role. The patent belongs to the entity that owns it.

Hon. Geoff Regan: You talked about there being 78 months for patents, but you explained that often people don't make the request to treat the patent until the last year or so.

Can you give us a comparison of the time in Canada, versus other countries, from the point of the request to treat until the patent is issued? It seems to me, from what you are saying, that this would be much more useful to us than simply from the time of initial application.

I don't mean, right this instant, obviously.

Mr. Sylvain Laporte: We provide the entire timeframe, because you are going to hear about how much time it takes; that it's very long. Well, it is long because we have that five-year period in Canada, which is something that does not exist in many other countries.

Hon. Geoff Regan: Can you give us both? In other words, can you provide us later on with something that provides us all—

Mr. Sylvain Laporte: In fact, I can tell you today. If we take out the average time for someone to request that we examine, we are at about 48 months.

Hon. Geoff Regan: My question is the time in comparison with other major jurisdictions, if you could do that later for us.

Can you do it instantly?

Mr. Sylvain Laporte: I can do it now. It is apples and oranges, because the laws are very different. In the United States, for example, it's 39 months compared with our 48. But they have different tests of law from ours. That's why you have to take the comparisons with a grain of salt.

We are slightly higher than the countries we associate with.

Hon. Geoff Regan: You talk about the implications of new strategic uses of patents. Can you give me some examples of what you mean by "new strategic uses of patents"?

Mr. Peets?

Mr. Gerard Peets: Absolutely. That's actually linked to the question that the chair asked me at the end of the presentation. Some of the things I would put in that bundle include that firms are feeling they need to develop defensive patent portfolios. We have talked to some firms in the ICT sector and the oil and gas sector.

Hon. Geoff Regan: Can I ask one last question here? It's very short, and you will like the question. It's useful.

The question is where are the big problems internationally? You ask whether the patent regime in target markets such as the U.S., EU, and Asia are really the key. I don't want to talk about the roles in espionage and hacking; we don't have time for that. But where are the big problems?

The Chair: That question is out now. The question ended up being much longer than "very short". That will have to stay out there. We can maybe pick up that answer along with somebody else's questions.

We go into the second round now, which is for five minutes. We now go to Mr. Carmichael for five minutes.

Mr. John Carmichael (Don Valley West, CPC): Thank you, Chair. That last question sounded like a quick question, but it sounded like a book to answer it.

Mr. Peets, I would like to begin with you, if I could, just following up on my colleague Mr. Lake's request for names of organizations and some independent experts that we might call on to assist in this study.

Mr. Gerard Peets: I would probably want to think about this a little bit. Some of the discussion earlier in response to Mr. Braid's question would apply here; that's where I tried to identify some of the main IP stakeholder groups.

Generally, what you see is that the main IP stakeholder groups have industry associations. Those industry associations are a good place to start, as are national business associations and national associations that represent other stakeholder groups.

Mr. John Carmichael: Maybe I could ask you in the interest of time, if you could, to give some thought to it and give us a few names that might add to the value of what we're trying to accomplish at this committee.

I would like to go back to some more rudimentary understanding of patents, if I could. This is to Mr. Laporte and Madame Lajoie.

Could you take me through the process? When I apply for a patent, if I'm a small business or whatever, you talk about an 18-month period when the patent application—with the detail—is open to the public. At what point in time does that happen? Is it at the end of the five years, or is it right out of the chute?

If I have an idea as a small business, you mention that I have five years to trigger the patent review. How do I protect myself in that first five years, if I believe the idea is intellectually important?

● (0945)

Mr. Sylvain Laporte: You touched on a number of points. I will try to answer, and then we'll see—

Mr. John Carmichael: We have limited time, so I'm trying to cover it all.

Mr. Sylvain Laporte: When you apply, you have 18 months during which we do not disclose your invention.

I think you said we would disclose.

Mr. John Carmichael: I'm sorry, I understood there was an 18-month period where that application was visible to the public, or to anybody who—

Mr. Sylvain Laporte: When you file with us, for 18 months, although you disclose to us, we will not make it public. You're protected from that perspective, but at the 18-month point, we do make it public.

Mr. John Carmichael: Okay. When do companies generally make that application? Is it at the beginning of the five-year period?

Mr. Sylvain Laporte: Right. The clock starts when they apply.

Mr. John Carmichael: When they apply, but that's not at the 60-month point.

Mr. Sylvain Laporte: About 30% of applications will request examination and application. Then you have five years. You know, if you look at a histogram over the five years, about 30% apply right off the bat, then another 25% apply at the five-year point. Those are the people who want to take their time with respect to the application.

So there's a distribution there of when they ask us to do the examination.

Mr. John Carmichael: At what point does the patent pending label actually kick in?

Mr. Sylvain Laporte: As soon as they apply.

Mr. John Carmichael: That's at application, so if I do that right at the beginning of the five-year period, that patent pending lasts as long as it takes for you to finally declare that the scope meets your criteria.

Mr. Sylvain Laporte: That a decision is made. You could withdraw your patent at some point.

Mr. John Carmichael: And that would protect me as a business or an intellectual property owner.

Mr. Sylvain Laporte: With patent pending, no.

I think all you're doing is indicating to the market that you have something playing in that area, and what it does, basically, is it gets your competitors to pay attention to it. They want to make sure that if I'm building something that is pretty much the same as you, but you're ahead in the process.... For example, I may end up having to pay you royalties when you eventually get your patent. As a competing business man, I should be aware of those situations because it may cost me tomorrow.

A patent pending is not a protection in itself.

Mr. John Carmichael: Clearly, when you talked about the value increase—the value equation over the last few years from 20% of asset value to 70% of asset value—the sooner I can actually get my application before you and get your approvals done, the better off I am if I think I have something of true value.

Mr. Sylvain Laporte: From that perspective, yes.

Mr. John Carmichael: Otherwise I'm not protected.

Mr. Sylvain Laporte: Correct.

There are other situations, for example in the health industries and the pharmaceutical area, where there's a synchronization that has to happen with the allocation of your patent and certification with the health agencies.

They may require more time to process a patent. It's not everyone and it's not every industry that is looking for the fastest grant possible.

The Chair: Thank you very much, Mr. Laporte and Mr. Carmichael.

Now to Mr. Harris for five minutes.

Mr. Dan Harris (Scarborough Southwest, NDP): Thank you, Mr. Chair. Thank you, again, to everyone for being here.

Mr. Regan brought up Nortel, and I'm going to bring it up, perhaps, in the context of the Jenkins report, with the statement from the report that says:

> ...the preponderance of foreign (mostly US-based) investors in late-stage venture capital and buyouts of Canadian firms means that the intellectual property is likely to be exploited primarily outside Canada.

Frankly, I think for me this raises a concern that there might be a drain of our intellectual property, and in many cases intellectual property that was fostered with government assistance. That intellectual property is then going to be monetized outside of Canada, and the benefits are going to be reaped from non-Canadian firms in the U.S. and elsewhere.

Is that something about which there is a concern in your world, that Canada might be losing some of its intellectual property to elsewhere and losing out on the economic benefits?

● (0950)

Mr. Gerard Peets: Again, that's a very good question.

The patent is something that can be sold or assigned or licensed. That's provided for, and it's kind of intrinsic to the idea of taking an invention then marketing it.

With respect to the question of patent portfolios moving from Canada to the United States in the context of an investment takeover—an American company or somebody else buys a Canadian company—if that company qualifies for a net benefit review under the Investment Canada Act, then that process would be triggered.

Mr. Dan Harris: Is any of that going to be triggered if only intellectual property is sold, as to whether there would be a net benefit review possibility?

Mr. Gerard Peets: Yes, the sale of just a patent portfolio without a controlling interest in a corporation wouldn't trigger the Investment Canada Act.

Mr. Dan Harris: So that's potentially something we should be mindful of in looking at the Investment Canada Act down the road.

Because yes, when the Nortel portfolio was sold off, $4.5 billion is a lot of money. But a lot of experts and folks in the industry have estimated that the actual value and worth of that IP is much greater. I worry that we perhaps lost a little bit there.

I'm going to go back to the Jenkins report, but on a separate comment that was made in the report and it actually works out because it's a bit of a question. Are legal and regulatory frameworks and policies—for example, in areas such as competition, corporate taxation, bankruptcy, and most specifically, intellectual property—conducive or not to business innovation?

That's a question that's raised out of the report. So in your opinions, is it conducive to business innovation or not? Are there problems that you see there that need to be fixed?

Mr. Gerard Peets: One of the messages I tried to get across in the presentation is that there is a lot of convergence in the area of IP policy at the basic level. Between us and our trading partners, intellectual property frameworks, in terms of the basic building blocks—more or less the terms of a deal—are kind of common. Yes, their purpose is to create the conditions for innovation and we think they do, certainly.

You go back to the theory that if somebody is going to make an invention and have no assurance that they might be prevented from marketing it because a competitor comes up and copies it without having invested in the invention, then they're going to be careful before taking it to market. In copyright as well, you're confident to publish your work and spread the knowledge because you know you retain copyright in it—

Mr. Dan Harris: I'm going to have to just cut you off, so I can get one last question in before my time elapses. Do you see areas where it's actually hindering business, where you see changes that need to be made?

Mr. Gerard Peets: There certainly is a tension when you talk about setting up a right to exclude others from a market—essentially, if you constrain the concept of market to the market for your one little invention. There is tension between that and the idea of competition.

So, to the extent that you have problems in a patent regime where maybe there are too many patents being granted, or maybe they're overly broad, or maybe they're being bundled in certain thickets, you can see a situation where they could create a transaction cost, they could create a friction in the market, create uncertainty that leads to litigation, or extensive negotiations between parties.

All of the energy and resources that are driven into that are energy and resources that are not driven into making new inventions, and marketing and selling them.

The Chair: Thank you, Mr. Peets.

Mr. Richardson, for five minutes.

Mr. Lee Richardson: This is a huge and broad area to cover.

I'd like to just go to the World Intellectual Property Organization for a minute and get a sense of that, because my sense is also that so many of the new technologies are international. They are so worldwide. There are no borders any longer in many businesses, as well as in IP. It's simply so broadly used and identified.

I don't have as great a problem with the parochial protectionist, isolationist folks. We can buy intellectual property from the United States or anywhere else as easily as they can from us, so I don't have that big concern.

What I am concerned about is how we Canadians fit into the World Intellectual Property Organization. Is it a quasi-governmental organization? How does that work? What implication does applying just for a patent or trademark in Canada have, without proceeding further to seek patents in other jurisdictions? Does the World Intellectual Property Organization have an umbrella protection?

● (0955)

Mr. Gerard Peets: I can perhaps start, and then perhaps my colleagues will want to join in.

Just to answer the last question first, a patent that's granted in Canada applies in Canada. These IP rights apply in the country that they're given in, and that's what's underlying the idea that you patent in the market that you want to sell in.

If it would be beneficial, I have my notes here on WIPO and some other international forums that I could just quickly walk you through.

The WIPO is a 185-member-state organization. It's there to promote the protection of IP and the harmonization of IP laws internationally. Canada has implemented the Patent Cooperation Treaty under that forum. Under Bill C-11, the Copyright Modernization Act, the rights and protections that are set out in two other treaties, which are referred to as the WIPO Internet treaties, would be implemented in our law. There are other treaties in the context of WIPO that are either finalized or being worked on.

There's also the WTO agreement on TRIPS, which is part of the WTO. It's a comprehensive, multilateral treaty that provides standards for the protection of IP rights that are binding, and procedures and remedies for enforcement, and they're subject to dispute settlement. That's been adopted by 154 countries, so it's very broad as well.

We've also taken on commitments in the NAFTA, which has an IP chapter. Recently Canada signed the Anti-Counterfeiting Trade Agreement, which is pluri-lateral, and it's been signed now by, I think, nine countries. It has standards for the enforcement of IP rights as opposed to the provision of IP rights in law.

Mr. Lee Richardson: That's very helpful.

One of the things I see from companies that we deal with is trying to have enforcement in other countries, even when you have patents, particularly with regard to—well, with Mike it was digital imaging technologies—computer technologies in China, and piracy and that sort of thing, and how to avoid that. Is there any progress there?

Do you have negotiations with governments of other countries to enforce patents, to protect, for example, Canadian companies with patents in foreign countries?

Mr. Gerard Peets: The enforcement of patents in foreign countries is important for exporters. We have some data, actually. I don't know if I can bring it up quickly. Yes, here it is.

The RCMP has reported over $76 million in retail seizures in Canada, in 2011, of counterfeit goods. The OECD estimates that global trade in counterfeit and pirated goods amounted to $250 billion in 2007. The International Chamber of Commerce estimated the cost of counterfeiting in G-20 countries at $62 billion, equating that with 2.5 million jobs lost.

One of the things that has recently happened is the ACTA. Some countries were involved in that. I can bring them up. China was not one of them, but definitely there were some key export markets: Australia, the European Union, Japan, Mexico, Morocco, New Zealand, Korea, Singapore, Switzerland, and the United States. Those are all countries that got together to try to develop the ACTA, which is the international gold standard of IP enforcement currently.

● (1000)

The Chair: Thank you, Mr. Peets. Sorry about the time again.

Now it's on to Mr. Stewart for five minutes.

Mr. Kennedy Stewart (Burnaby—Douglas, NDP): Thank you, Mr. Chair, and thanks very much for this very enlightening discussion. I have two questions. I'm going to ask them both at the same time, maybe the first one to Mr. Peets and the second one to Mr. Laporte. This will give you a little time to think about your question. I'd just ask in advance that if you have any supporting documentation, you perhaps apply it to substantiate your answers.

Mr. Peets, I think of things in terms of cause and effect often. My adage is that if you can't measure it, it doesn't exist. We've heard a lot about IP and we've had some great ideas about accounts, filings, and the length of time it takes to process. But I want to know more about the effect, which according to your presentation is innovation. I want to understand the link between the patent, the IP process, and all the information we've been given today, and innovation in a sense.

What is innovation? How do you measure it? And can you provide any information establishing a link between our IP structure and laws and whether they are good or bad for innovation?

That's my first question. I only have five minutes, and so have you.

Mr. Laporte, I'm interested in IP filings by universities and colleges. We've talked about IP filings by business almost exclusively, but I'm very interested in this as a way of funding universities and colleges, which could use this to capitalize themselves.

I'm wondering whether, from your survey or information, you know what percentage of the total Canadian IP filings or grants are held by universities—or partly held by universities, perhaps between professors and the university—and how we stack up internationally in that sense. Are the universities in Britain or the U.S. getting more patents than we are?

Then, there are impediments to filing. Lack of knowledge is one thing—or lack of thought about filing for patents is something that you indicate you found through your survey. I'm wondering whether you have any ideas as to what else may be stopping universities from actively participating in this process.

Maybe we can hear Mr. Peets first.

Mr. Gerard Peets: I'll let Denis answer.

Mr. Kennedy Stewart: That's great, a new voice. Thank you.

Mr. Denis Martel (Director, Patent Policy Directorate, Strategic Policy Sector , Department of Industry): Thank you.

I'll pick up on some of the points that were already raised, just to package them.

Innovation is about bringing new products and new services to market. If you take a patent on IP, as we discussed, you get the right, but it comes with disclosures. By protecting the right, people can recoup their investments; they can get financing by virtue of owning those rights.

So there is action to get financing, which is key to support innovations, and there is protecting those investments, as we said, on a longer timeframe to recoup the investment, whether done in R and D or through other aspects of inventing.

The disclosure aspect is key, as we mentioned, in follow-on innovations. Other companies can look at the patent and improve. That's how the system works. There is a bit of a debate about where you put the line of protection in ensuring that there is quality. Some people would say that it may impede innovation, but overall people think this is the right system to promote it.

Mr. Kennedy Stewart: Okay.

Mr. Laporte, you have only a minute and 15 seconds. I'm sorry for the rush.

Mr. Sylvain Laporte: I'll be really quick, then.

With respect to percentages of university holdings and whatnot, in terms of applications for this past year, three or four universities are among the top 20 applicants, and they probably totalled in number close to 70 applications out of the 36,000.

Now, 36,000 includes the foreign applications, so we'd need to recalculate the percentage of university holdings among the Canadian applicants. I would guesstimate at this point that around 1% of Canadian holdings would be from universities.

With respect to impediments, I was with York University just last week talking to their tech transfer folks and their VP of research and development, and we talked about impediments. One of the key impediments for university researchers is the dissonance in synchronization between “publish or perish” and the 18-month non-disclosure that we have.

Synchronizing those two can be a bit difficult for them, when a professor has pressure to publish; whereas we go “hmm”. So there's a bit of dissonance there that has to happen. It's an impediment that they work around. It's not a showstopper, but it has caused them some anxiety.

● (1005)

The Chair: Thank you very much, Mr. Laporte.

Now we go on to Mr. McColeman for five minutes.

Mr. Phil McColeman (Brant, CPC): Thank you for being here. It's very complex, as you say.

My questions really have to deal with thinking of myself being in a position where I have an invention or an idea and I would like to get it protected, and I want your perspective on this. It seems that the system is such that it actually promotes litigation in some ways because of the complexities. Is that a fair comment?

Mr. Gerard Peets: I'll start on that one.

I don't think the system promotes litigation, but the system is designed to provide private rights to businesses and people, and then it's up to the right holder to enforce his or her rights. What that means is that, when you get legitimate disagreements between people, they have to go to court. The system is designed to use civil litigation as a backstop to sort everything out.

Mr. Phil McColeman: I understand that, and it's more from the point of view of a couple of people I know who have tried to get their ideas and inventions off the ground, and often they don't have the resources to hire the legal expertise. Do you find that much, in terms of the frustrations of people who are coming to you right out of the gate?

Mr. Sylvain Laporte: I'll take a crack at that one.

We have basically two types of applicants. We have those who are represented by a professional IP agent—who is typically a lawyer with an engineering background, if it's in the patent world—and we have unrepresented applicants.

If you do hire a lawyer, as I mentioned before, the costs will vary, but $20,000 to $25,000 is likely in the range of what you're going to pay. If you come in unrepresented, you don't get that counsel. The IP world is very complex from a legal perspective, and some of our more troublesome application processes have been with people who have been unrepresented, because they don't understand the law.

We actually do encourage our applicants to hire a good IP agent to represent them. Basically, if your idea is worth protecting, it's worth protecting right. Even if you're unrepresented and you do get a patent, does the patent represent the scope that it should? Are you still well protected? Because you didn't have benefit from legal counsel, you may not have the result you were anticipating. So we do encourage that our folks seek counsel.

Mr. Phil McColeman: That leads me into the next question. Mr. Laporte, you mentioned in your presentation that the difference in the laws is the reason why there's a 39-month U.S. period of time for the process, and in Canada it's 48 months. Am I correct in interpreting that's what you said?

Mr. Sylvain Laporte: Actually, what I said was that we have different tests that are based in law that we have to conduct. The law doesn't state that we take 49 months and they take 38.

Mr. Phil McColeman: No, but it's the differences in the law that cause us to have more tests and more questions, and require us to spend more time.

● (1010)

Mr. Sylvain Laporte: Different, not necessarily more, but different. We look at things differently than they do, and the amount of time it takes to process an application is also probably a whole lot more dependent on the administration, on how many people you have going through the applications.

It's a question of efficiency and also a question of receiving applications that are requesting a whole lot more than they really should, and it takes seven iterations to bring you down to the invention. There is a whole lot of time that is spent on that iterative process.

I wouldn't read that the 48-month period is the result of our act. It's the result of a lot more variables than just the act itself.

Mr. Phil McColeman: Right, and that kind of leads me to my last question. Originally, I had no expectation of what the numbers were in terms of the number of applications, the need for processing, the need for resources. What kind of resources does our government have in place to handle these numbers? Can you give me a sense of the scale of the bureaucracy that it takes to handle this?

The Chair: I apologize, but we're over our time on that as well. We'll have to leave that for another question or certainly you can respond to that after the fact, as well.

Now we'll go on to Mr. Masse, for five minutes.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair.

I'd like to go back to one of the things that I thought was really interesting in your presentation, Mr. Laporte, about the five years to apply for patent pending, an issue that's being discussed. You were saying that 30% asked for an examination right away, but 25% wait until the five-year mark.

Is that an impediment to us in getting things to market? When one-quarter of all those applications wait until the end of five years —and I know you said comparing us to other countries is like comparing apples and oranges—should that five years be reviewed in terms of processing? If one-quarter of applicants are saying they'll file and wait until the very end, that's a little alarming in my opinion.

Mr. Sylvain Laporte: You have to understand that the business folks who make the application also make the decision to wait. Clearly, in their business and their industry, it's beneficial to wait. It's not necessarily an impediment. There is a reason for that to happen. It could be that you may have a weak patent and you want to keep the patent pending as long as possible.

It would be interesting to look at the makeup of the 25%. I don't know that we've done that.

Mr. Brian Masse: That was going to be my next question. Is there a particular segment of patent applicants that dominate that 25%?

How did we arrive at five years? Why not four years? Why not six years? How long has it been five years in Canada?

Mr. Sylvain Laporte: Since 2004.

Mr. Brian Masse: Since 2004...and what was it prior to that?

Ms. Agnès Lajoie: When we implemented the system with the request for examination in 1990, it was seven years. We reduced it to five years in 2004.

Mr. Brian Masse: What was the objective of reducing it to five years in 2004? What was the specific objective to be accomplished?

Ms. Agnès Lajoie: As Mr. Laporte said, it was to reduce the period of uncertainty and to make sure that—based on what we had observed during those years—those applications are examined in a timely manner.

Mr. Brian Masse: With regard to applications, they've increased in volume on a number of different fronts. How is your budgeting of your department? Has your department increased in budgeting over the years? Has it decreased? What is happening in terms of the volume of processing and how it has affected your budget?

Mr. Sylvain Laporte: First of all, CIPO is not a department. We're an agency of the Department of Industry. We are 100% user-fee based. I don't have a government appropriation.

Mr. Brian Masse: Your fees are—

Mr. Sylvain Laporte: They are set, yes. We go through Parliament to raise our fees. We are also a revolving fund, meaning that the fees are set so that we can, for a period of a few years, accumulate net income where at some point the costs will exceed the revenue. It's planned that way. We will burn the accumulated net income and then we will come back for another fee review a few years later. There's a cycle that we go through.

A budget allocation for us is not necessarily as big an issue as it would be for a department. We have the money that we receive from the applicants themselves.

● (1015)

Mr. Brian Masse: It's how Passport Canada operates, too.

Mr. Sylvain Laporte: That is correct.

Mr. Brian Masse: You did a survey that seems to be of particular value. Who commissioned that survey? Who did that for you? Do you have the appropriate funds for the continuation of the survey? I find that to be particularly helpful from your testimony, but at the same time you identified that it's particularly difficult to do. So it must be an allocation resource....

Who did that for you? Do you have the appropriate funds to be able to commission another? You'd really be able to benchmark once you have that replicated in another couple years or so forth.

Mr. Sylvain Laporte: We have the resources. Not doing the survey was not a question of not having the resources. It was more a question of the fact that we wanted to concentrate on the innovators with our round tables and get direct face-to-face information from them.

We're not ruling out the possibility of doing a survey shortly after. Equipped with the information from the round tables, we may want to validate with a whole lot more businesses at large than what the round tables will provide. We're looking at the round tables as a very informative way of acquiring information, but then pursuing another means. A survey is quite possible at that time.

Mr. Brian Masse: Are you measuring—

The Chair: Sorry, Mr. Masse. We're out of time again.

Mr. Brian Masse: Just real quick.

The Chair: Sorry.

Mr. Brian Masse: Are you measuring your round tables, in terms of results?

Mr. Sylvain Laporte: We take copious notes. Yes.

Mr. Brian Masse: Okay. Thank you.

Thank you, Mr. Chair.

The Chair: That was quick.

Now, on to Madam Gallant for five minutes.

Mrs. Cheryl Gallant (Renfrew—Nipissing—Pembroke, CPC): Thank you, Mr. Chairman.

My first couple of questions are very similar to those of my colleague. I'm sure it's just a matter of two minds thinking alike, and not needing to get a copyright.

First of all we've established that when a small company realizes they may have a patentable idea, if they aren't familiar with the process, the company should see a lawyer. They could contact you first; it's just that it will be more complicated.

Will it be less expensive, though, in the long run?

Mr. Sylvain Laporte: Less expensive in the long run? For sure they're going to save the legal fees, but if they don't get what they're expecting because they don't truly understand the law, they may be shooting themselves in the foot as well.

I'm not sure if I understand your question properly.

Mrs. Cheryl Gallant: You answered it correctly. They won't receive the benefits of having a patent if it takes too long or it never comes to fruition.

You mentioned round tables. Do either of your offices provide information sessions on how the patent process works? Do you go out to communities?

For example, if I invited you to Renfrew—Nipissing—Pembroke and I put together a cluster, if you will, would you make a presentation to these people on what they need to do? Some of them are already familiar with the process, but you could expand upon what they may already know.

Mr. Sylvain Laporte: We have an outreach team who does that. In fact we've been speaking to most of the universities and the technically oriented colleges in Canada.

We also have, with various IP associations, a speakers bureau type of approach. We have canned presentations, such as IP 101, and how to benefit from IP. Either my own staff or staff belonging to the various IP associations can take these canned briefings and give them out. We've been giving hundreds of these briefings per year. It's been quite successful.

We also have case studies that we've prepared for university professors, which they can give in their engineering, management, or law courses. These are cases that will bring the students to a better understanding of the use of IP and the benefits of using IP for an enterprise.

We have quite a bit of outreach, but when you hear that 80% of companies don't know who we are, it's an area where we need to spend a whole lot more time and resources.

Mrs. Cheryl Gallant: Again, my colleague touched on disputes. Is there an impartial international tribunal that presides over disputes involving companies from different continents?

For example, if a U.S. company is accused of unfair market sharing of its intellectual property with, say, a company from the EU, how is it decided which business is in the right? Is it fought in the courts? If there are two ongoing, similar court actions, one on each continent, which court trumps the other?

● (1020)

Mr. Sylvain Laporte: There's no international court. IP really is a national legislative environment.

Mr. Gerard Peets: That's absolutely true. The one element is that, under the TRIPS Agreement of the WTO, if a country wasn't living up to its obligations—which is different from one company in one country suing another company in another country—then there are mechanisms under the WTO TRIPS.

Mrs. Cheryl Gallant: Is there an impartial international body that enforces the IP violations, or is it again a matter of winding through the courts?

Let's say a country copycats part of an engine. They take this engine, mass produce it, and send it to the country where the engine was first manufactured. What recourse, other than the courts, does the company have for that company in another country to cease and desist.

Mr. Gerard Peets: It's the national framework that the patent was issued in, and they would pursue litigation.

In answer to your question on whether there is an international impartial body, the answer is no.

Mrs. Cheryl Gallant: Has one ever been discussed or contemplated, or is the court system pretty well de facto the way everybody wants to go?

Mr. Gerard Peets: It's consistent with the idea that the frameworks are all national.

Mrs. Cheryl Gallant: Okay.

The Chair: Thank you very much, Mr. Peets.

We'll go to Madam LeBlanc for five minutes.

[*Translation*]

Ms. Hélène LeBlanc: Thank you.

Mr. Laporte, I believe you said you had notes on the round tables you are holding. Would it be possible to provide those notes to the committee members?

Mr. Sylvain Laporte: Yes, they are being prepared.

Ms. Hélène LeBlanc: Very well.

You say they are being prepared. I am talking about what you have done so far. When would it be possible to get them? They would give us some valuable information that could inform our study.

Mr. Sylvain Laporte: May I make a suggestion? We are going to wrap things up in late June. At that point, we could submit not only the notes from each round table, but also the report, provided that late Jane fits your timeline, of course.

Ms. Hélène LeBlanc: Thank you. That would be greatly appreciated.

Canada is in the midst of negotiating free-trade agreements all over the world. I want to talk comparisons. This may be more suited to Mr. Peets, but perhaps Mr. Laporte could provide some clarification as well.

On one hand, you have the European Union, which has some rather significant IP legislation, and on the other hand, you have Asia-Pacific. You said that China is really starting to enter the whole IP realm, but in a very different way. What are the concerns when it comes to intellectual property and free-trade agreements, first of all with Europe, and then if there's time, with Asia-Pacific? Furthermore, what impact could those negotiations have on Canada's IP regime?

[*English*]

Mr. Gerard Peets: I can begin with that one. International negotiations are led by the Department of Foreign Affairs and International Trade. In the context of negotiations that are ongoing, I can't really talk about that.

Ms. Hélène LeBlanc: Can you tell me what your feelings are about our industry being able to compete in these different IP regimes?

I'll let you finish what you were saying. I interrupted you.

Mr. Gerard Peets: In the NAFTA, for example, there is an IP chapter. Within the context of the Canada-EU scoping agreement, which you can find on the DFAIT website, IP is in the joint report that both countries did at the outset to say, “This is what we're talking about”.

There's an interest that flows back to the WTO as well. There's an interest amongst trading nations. You know, companies are global, and trade could be supported by greater alignment of IP regimes amongst countries. So that's something that gets picked up commonly now in bilateral trade agreements that involve not only Canada but other countries.

● (1025)

Ms. Hélène LeBlanc: How is the industry department preparing industry in this global regime as concerning IP? Are there plans to help industry compete in these new trade markets, if I may say so?

Mr. Gerard Peets: As part of its work, when the Department of Foreign Affairs is considering a trade agreement it goes out and asks Canadian businesses what they are looking for and what their concerns are. It builds that in. Then the Department of Industry—in particular where I'm situated, which is the policy function for IP—works very closely with our other departments and DFAIT to understand how things are evolving into support negotiations.

Ms. Hélène LeBlanc: What are the feelings of the small and medium-size enterprises about those trade talks, and how are they preparing for them?

Mr. Gerard Peets: I'm trying to recall if the Canadian Federation of Independent Business has made a statement on this. In fact, I cannot recall right now, but that would be what I would look for.

The Chair: That's all the time you have, Madam LeBlanc. It's right on five minutes.

Thank you, Mr. Peets.

Now on to Mr. Braid as the final questioner.

Mr. Peter Braid: Thank you, Mr. Chair.

Just to follow up with some points for clarification, Mr. Laporte, and to come back to a previous conversation, you mentioned an 18-month period of confidentiality. Could you just clarify that and what the purpose of the confidentiality period is?

Mr. Sylvain Laporte: When an application is submitted to us, it describes the invention in great detail and it makes claims with respect to what the rights should be, so all of that information, all of that package, is not made public. We keep it in our databases, locked tight, and we will not make it public until the 18-month clock has run out.

Mr. Peter Braid: Why? What's the purpose of the cloak, if you will?

Mr. Sylvain Laporte: That's a good question. It's probably one of those 1950s things that predates most of us.

Mr. Peter Braid: You mentioned four universities in the country that represent some of the top 20—

Mr. Sylvain Laporte: The top 20 filers, yes.

Mr. Peter Braid: You mentioned York University. What are the other three universities?

Mr. Sylvain Laporte: York is a university I visited last week.

Mr. Peter Braid: What are the four top ones then?

Mr. Sylvain Laporte: In order, they are the University of British Columbia, the University of Alberta, Queen's University, and Université Laval.

Mr. Peter Braid: That's interesting.

This issue of the exercising of the patent in the fifth year, the 25% to 30%, when that happens, is that good for competition or not? Is there potential abuse of this exercising in the fifth year?

Mr. Sylvain Laporte: We talked earlier on about the strategic use of IP for each company, their own strategy. In your market, in your area of technology, there may be an advantage to create uncertainty. There may not be.

Again, going back to the pharmaceutical companies, because of the synchronization requirement with health certification, which takes longer than the patent cycle, they actually don't want to go too fast and there are reasons for that.

Some are probably to create uncertainty, but not every case, for sure.

● (1030)

Mr. Peter Braid: Mr. Peets, I realize that all of you here are experts in the Canadian system and not the U.S. system, but are there any elements of the U.S. system with respect to the patent regime—the IP regime patent protection—that we may wish to study further and where there are perhaps advantages to the U.S. system?

Mr. Gerard Peets: That's a difficult question for me to answer. There are a lot of complex issues that we are dealing with and it's not always clear. The frameworks are taken as a whole, and it's kind of tough to take little bits of them and compare.

I can point out a couple of differences. Probably the biggest difference, without saying whether it's good or bad—my colleagues may comment—is that in the U.S., software patenting is prevalent. In Canada, it is not.

This is an issue where Canadian software companies are brought up in a school of thought where software is not patentable and they can face challenges when they enter the U.S. market, which is thoroughly patented. That was the example Sylvain gave of patent thickets in the United States.

Mr. Peter Braid: What is the reason for that difference? Is it culture? Is it business environment? Is it the legal framework, the fact that software is patented and there is more prevalent patenting of software in the U.S.?

Mr. Gerard Peets: It's a feature of the legal framework.

Mr. Peter Braid: So one of the things we may wish to explore is the difference in the legal framework between Canada and the U.S. as we proceed with our study.

Mr. Sylvain Laporte: Perhaps I could add to that. My colleague, who heads the U.S. IP office, humorously tells us that with the latest act that's been passed in the U.S., the America Invents Act, they're actually catching up to the rest of the world. So I'm sensing, through your questioning, that you believe they have something we should look towards in terms of improvement.

Mr. Peter Braid: Your sensing is correct.

Mr. Sylvain Laporte: I would maybe offer an opinion that Canada has actually something that they are aspiring to. So they're going to take the next four to five years to implement this new America Invents Act to actually align themselves with a legal framework that is closer to the Canadian framework.

But Canada is also closer to the rest of the world, so the United States is actually coming to the rest of the international community. I'm not saying that there aren't areas in their legal framework that would be beneficial to us, but principally, from a big-picture perspective, they're in a bit of a catch-up mode.

Mr. Peter Braid: That's interesting. Thank you.

The Chair: Thank you very much, Mr. Laporte and Mr. Braid.

I have one quick question, because we've asked around it. On the World Intellectual Property Organization, do you sense there's good momentum internationally for harmonization of the regulatory regimes? Obviously, that's a huge advantage for corporations to have an equal playing field in which the regulatory regime in each country is similar.

Mr. Sylvain Laporte: I guess there are two perspectives to your answer: a policy perspective and an administration perspective. From an administration perspective there's quite a tremendous amount of effort to harmonize our various legal frameworks to make sure that we can operate a lot more smoothly from a global perspective. The World Intellectual Property Organization is at the centre of this, and they've made material progress, in understanding that it's hard to rope in 184 different countries. But they've been successful in the past with some major global agreements that we've adhered to, so it's been quite fruitful for us to participate in those forums.

The Chair: Great. That's good news. As long as there's the momentum, it may be complex but if the momentum is there and we see some movement, then that's fantastic. Thank you very much to the witnesses.

We're going to suspend for just two minutes to allow the witnesses to move away from the table, if they like, and then we're going to deal with the votes on the estimates. So we'll suspend for two minutes.

● (1030)

(Pause)

● (1035)

The Chair: I'll call the meeting back to order to deal with this last portion of business. Perhaps we could take our seats and we'll deal with our votes on estimates.

It looks like we have agreement on our shortened process here.

INDUSTRY

Industry

Vote 1—Operating expenditures.....$320,477,000

Vote 5—Capital expenditures.....$7,139,000

Vote 10—Grants and contributions.....$724,565,000

Vote L15—Payments pursuant to subsection 14(2) of the Department of Industry Act $300,000

Vote L20—Loans pursuant to paragraph 14(1)(a) of the Department of Industry Act $500,000

Canadian Space Agency

Vote 25—Operating expenditures.....$163,079,000

Vote 30—Capital expenditures.....$152,535,000

Vote 35—Grants and contributions.....$36,597,000

Canadian Tourism Commission

Vote 40—Payments to the Canadian Tourism Commission.....$72,033,000

Copyright Board

Vote 45—Program expenditures.....$2,815,000

Federal Economic Development Agency for Southern Ontario

Vote 50—Operating expenditures.....$26,588,000

Vote 55—Grants and contributions.....$188,934,000

National Research Council of Canada

Vote 60—Operating expenditures.....$323,633,000

Vote 65—Capital expenditures.....$34,949,000

Vote 70—Grants and contributions.....$169,416,000

Natural Sciences and Engineering Research Council

Vote 75—Operating expenditures.....$42,357,000

Vote 80—Grants.....$998,918,000

Registry of the Competition Tribunal

Vote 85—Program expenditures.....$2,161,000

Social Sciences and Humanities Research Council

Vote 90—Operating expenditures.....$23,514,000

Vote 95—Grants.....$661,839,000

Standards Council of Canada

Vote 100—Payments to the Standards Council of Canada.....$7,629,000

Statistics Canada

Vote 105—Program expenditures.....$385,523,000

(Votes 1, 5, 10, L15, L20, 25, 30, 35, 40, 45, 50, 55, 60, 65, 70, 75, 80, 85, 90, 95, 100, and 105 agreed to)

ATLANTIC CANADA OPPORTUNITIES AGENCY

Atlantic Canada Opportunities Agency

Vote 1—Operating expenditures.....$74,337,000

Vote 5—Grants and contributions.....$225,214,000

Enterprise Cape Breton Corporation

Vote 10—Payments to the Enterprise Cape Breton Corporation.....$57,268,000

(Votes 1, 5, and 10 agreed to)

ECONOMIC DEVELOPMENT AGENCY OF CANADA FOR THE REGIONS OF QUEBEC

Economic Development Agency of Canada for the Regions of Quebec

Vote 1—Operating expenditures.....$43,169,000

Vote 5—Grants and contributions.....$252,053,000

(Votes 1 and 5 agreed to)

WESTERN ECONOMIC DIVERSIFICATION

Western Economic Diversification

Vote 1—Operating expenditures.....$43,223,000

Vote 5—Grants and contributions.....$123,496,000

(Votes 1 and 5 agreed to)

The Chair: Shall the chair report votes 1 to 105 under Industry; votes 1, 5, and 10 under Atlantic Canada Opportunities Agency; votes 1 and 5 under Economic Development Agency of Canada for the Regions of Quebec; and votes 1 and 5 under Western Economic Diversification, less the amounts voted in interim supply under Industry, Atlantic Canada Opportunities Agency, Economic Development Agency of Canada for the Regions of Quebec, and Western Economic Diversification, to the House?

Some hon. members: Agreed.

The Chair: Thank you very much, ladies and gentlemen.

Without anything further, we're adjourned.

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