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Chair

Mr. David Sweet

Standing Committee on Industry, Science and Technology

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● (0845)

[*English*]

The Chair (Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC)): Good morning, ladies and gentlemen. *Bonjour à tous*. Welcome to the 31st meeting of the Standing Committee on Industry, Science and Technology.

The first thing I would like you to note is that this morning both clocks are inaccurate, in that they are not following our BlackBerry time. So as usual, as I mentioned to members, we will revert to BlackBerry time, because that's generally synchronized with the House of Commons time. So right now it's 8:45 a.m., according to my BlackBerry.

In front of us we have multiple witnesses: from the Canadian Intellectual Property Council, Graham Henderson, co-chair; from the Intellectual Property Institute of Canada, Mark Eisen, president, and Michel Gérin, executive director; and as individuals we have Jeremy de Beer, associate professor, faculty of law, University of Ottawa, and also Ruth Corbin, managing partner and chief executive officer, CorbinPartners Inc.

I will start at the beginning. Ms. Corbin, you had requested a specific order, so I'll just give you the order right now. It will be Mr. Henderson, Mr. Eisen....

I take it, Mr. Eisen, you're going to be doing the presentation. Is that correct?

Mr. Mark Eisen (President, Intellectual Property Institute of Canada): I will be sharing that with Mr. Gérin.

The Chair: Okay. And then we have Ruth Corbin and then Jeremy de Beer. Does that sound fair? Good.

We'll begin with Mr. Henderson for seven minutes, please.

Mr. Graham Henderson (Co-chair, Canadian Intellectual Property Council): Good morning, Mr. Chairman, honourable members of the committee. Thank you for the opportunity to appear before you. My name is Graham Henderson and I'm the co-chair of the Canadian Intellectual Property Council. I'm also the president of Music Canada, and I remain very involved with both the Canadian and international chambers of commerce and their IP committees.

The Canadian Intellectual Property Council was established in 2008 as a coalition under the banner of the Canadian Chamber of Commerce. The organization quickly became an influential advocate for the promotion of intellectual property and innovation in Canada.

The importance of intellectual property rights has long been acknowledged. Intellectual property encourages innovation that facilitates the development of products and services that enrich our lives, drive economic growth and competitiveness, and most importantly, maybe, create jobs. A strong IP rights system promotes economic prosperity and will protect the health and safety of Canadians.

Five years ago this very committee undertook an extensive study of IP in Canada, with the CIPC appearing as a witness. Around the same time, the Canadian Anti-Counterfeiting Network published their *Report on Counterfeiting and Piracy in Canada: A Road Map for Change*, of which I have copies here in English and French. It was endorsed by many business associations in Canada.

The road map identified many of the current weaknesses in Canada's IP laws and enforcement system, including a lack of police and prosecutorial resources that are dedicated to counterfeiting; insufficient criminal penalties; a lack of effective civil remedies; and a disempowered customs officialdom.

This report was provided to key federal cabinet ministers, parliamentarians, and policy-makers in Ottawa, and was received positively. Within months of its publication, this industry committee convened hearings and produced a report declaring urgent action.

IP rights, the committee reported, “facilitate and encourage the pursuit of innovation...and the disclosure of knowledge into the public domain for the common good”. It said, “The IP right is the only industrial tool that rewards the innovator commensurate with the innovation's commercial prospects.” It then said, “The Committee is of the opinion that a stronger legislative framework and adequate financial and human resources are important for the fight against counterfeiting and piracy in Canada.”

I might add that the NDP issued a supplementary opinion that actually strengthened some of the committee's recommendations. I believe we have the current vice-chair, Mr. Masse, to thank for that.

In response to the committee's report, which was endorsed by all parties, four government ministers signed a letter on October 2007 pledging action and stating unequivocal support for a strong IP regime. The letter read:

> ...this government is committed to the importance of providing a robust framework for intellectual property rights, not only to address the risks posed by counterfeit goods to consumer health and safety but to foster an environment conducive to innovation, in an effort to further attract investment and high paying jobs to this country's growing knowledge-based economy.

Other reports have since received positive feedback from the government, parliamentary committees, and policy-makers, including the 2009 CIPC report entitled *A Time for Change: Toward a New Era for Intellectual Property Rights in Canada*. This growing awareness of the need for reform of Canada's IP regime has been acknowledged by virtually all levels of government in Canada, together with individual creators, inventors, and business leaders.

However, despite this widespread acceptance and despite a commitment to implement this very committee's recommendations, the wheels of change have ground slowly. Of the industry committee's 19 recommendations, I believe only two or three are close to fruition. This is why the renewed commitment of the government to revisit this issue, as evidenced by these hearings, is so refreshing and welcome.

Having said that, many of us have what can only be described as a disconcerting sense of déjà vu. The simplest place for me to begin, I guess, would be to urge the committee to pay close attention to the unanimous eighth report of this committee in 2007, together with the government's response, and to rededicate itself to the realization of that committee's recommendations. These recommendations are, of course, not the end of the line. The 2007 industry committee was mostly focused on establishing the critical role that IP plays in innovation, as can be seen from the quote I read earlier, and establishing rules to better protect IP in the marketplace.

● (0850)

Other studies have focused on the critical role that IP plays in a nation's prosperity and innovative capacity. For example, the Coalition for Action on Innovation in Canada produced a widely praised report entitled *An Action Plan For Prosperity*. This coalition included a who's who from Canada's most innovative businesses. It was co-chaired by the Honourable John Manley and Paul Lucas.

The third recommendation they put forward in this report was to "adopt the world's strongest intellectual property regime". Here's what they said:

> A robust climate for innovation is only possible if Canada's regulatory processes encourage the development and launch of innovative products and if our laws ensure that inventors and those who invest in their ideas can fairly reap the rewards of their work. Canada should aim for a reputation as the best place in the world in which to research, develop and bring to market new products and processes. To achieve that goal, it is imperative that Canada seize current opportunities to improve its protection of intellectual property and thereby create a more attractive environment for investment in innovation.

Now, if I were to add to the 2007 recommendations, I might suggest the following. First, establish an intellectual property rights coordination council consisting of senior government officials, representatives from the business community, and IP rights holders. I would ask for the extension of data protection and for the implementation of a five-year patent restoration system. I would ask that we streamline the patent review system so that we can get products to market more quickly. And I would ask that we create judicial awareness of the importance of IP.

The Chair: Mr. Henderson, thank you very much. That's your time. We appreciate your comments.

We will now go to Mark Eisen for seven minutes. I understand you will be sharing the time with Mr. Gérin.

Mr. Michel Gérin (Executive Director, Intellectual Property Institute of Canada): Actually, Mr. Chairman, I'll go first.

[*Translation*]

Good morning. My name is Michel Gérin, and I am the Executive Director of the Intellectual Property Institute of Canada. Thank you for having us today and for taking on this important study.

[*English*]

IPIC is the professional association of patent agents, trademark agents, and IP lawyers. Our members help Canadians obtain and protect IP rights in Canada and around the world, and they help foreign companies obtain IP rights in Canada. Our members therefore have a unique perspective on the strengths and weaknesses of the Canadian IP regime and how it compares with the regimes in other jurisdictions.

Today we want to use that knowledge to provide you with an overall list of issues affecting the IP system, and propose a framework by which the committee may wish to organize and address these issues as well as the other issues that will come up in the course of your study.

Page 3 of our presentation document contains the mandate of the committee. I will briefly address the question of innovation in the intellectual property regime, and then we'll move on to the effectiveness of the regime.

There are many definitions of "innovation", and on page 4 we propose a simple one for the purpose of today's discussion: an idea is created, it's protected by intellectual property, and then it's commercialized.

You will notice at the bottom of that page that we have suggested some names of people and organizations that the committee may wish to speak to in the course of its study. Of course this list is by no means complete. We've proposed some throughout the document.

There are eight components to the IP regime in Canada. Today we'll focus on three: patents, trademarks, and industrial designs. These are listed on page 5. We explain to you in the following pages of the document the reasons why we have set aside the other five elements. We also provide information in case the committee wishes to investigate those further.

There are many ways of looking at the IP regime. We propose a framework that is certainly not scientific but is very much practical. On page 9 we talk about "The ABC of an effective IP regime: access, balance, control." We've applied this ABC to our three areas of focus—patents, trademarks, and industrial designs—to identify the issues that are affecting the system. As you'll see later in the document, we've classified these issues on two scales: the level of controversy surrounding the issue and the effort required by the government to either analyze and/or implement solutions to those issues.

I'll now turn it over to Mark, who will explain further this ABC and give examples of the issues we've identified.

● (0855)

Mr. Mark Eisen (President, Intellectual Property Institute of Canada): Thank you, Michel.

I'm speaking from the perspective of an intellectual property practitioner. I am a lawyer certified as a specialist by the Law Society of Upper Canada. I was registered as a patent agent and a trademark agent in both the Canadian Intellectual Property Office and the U.S. Patent and Trademark Office back in the 1980s, and I have been practising in the preparation, filing, processing, and examination of applications, which turn into the rights that we're discussing here today, for more than 25 years.

Page 10 of the presentation we've provided deals with the issue of awarenes. There are three issues here that are required for a proper intellectual property regime: awareness of the regime; trust in the system, both by Canadians and by those abroad; and accessibility, including financial accessibility of the system.

On awareness, I believe you heard last week that there is a very low awareness about intellectual property among SMEs in Canada. We need to engage the public and educate them on IP. The Intellectual Property Institute of Canada cooperates with the Canadian Intellectual Property Office, CIPO, in having a bank of speakers who actually do a road show, taking education across Canada, but they hit only small groups at a time.

There has to be a concerted effort to actually educate the public on the uses and benefits of intellectual property and to dispel many of the misconceptions that are out there. IPIC does its part by doing various outreach activities. For example, we recently met with members of provincial governments on the Atlantic coast. However, CIPO needs to have the budget to be able to do this as well. There is a marketing issue here. If people aren't aware of the system, they will not be using it.

Trust—meaning predictability and reliability—is a very important part of this. There are problems, for example, with inadvertent abandonment whereby rights can be irretrievably lost due to causes that can be completely beyond the control of an applicant, or through normal human error of an applicant, and the Canadian system is very unforgiving that way. This is not the fault of the Canadian Intellectual Property Office, but the legislation and regulations under which it works do not provide forgiveness for this type of problem.

I think the United States has a very good model for this. That's one of the things they do quite well. They're very forgiving in terms of inadvertent abandonment. They provide many opportunities to catch up, correct one's rights, and avoid this irretrievable loss of rights.

There are other problems with sound prediction and official marks, which we mentioned in our presentation. I can't go into those in detail, but they result in reduced reliability of the system, because people do not know what to expect, first of all, from CIPO when applications are examined, and second, from the courts when these rights eventually make it into court.

Accessibility includes financial accessibility. We have a scientific research and experimental development program that covers costs up to the point of determining that an invention is patentable, but not past that. So an applicant—that is, an SME—has to pay for this themselves, and very often they'll say no. They'll say either “No, I don't want to spend the money now”, or “Why should I bother getting a patent when it's so expensive to sue?” These types of problems have to be addressed.

We have a small entity system in place, allowing reduced government fees for companies with fewer than 50 employees, universities, and individuals, but it doesn't work. There was a case that came down some years ago that invalidated a patent because somebody accidently claimed to be a small entity when they weren't entitled to, and practitioners are afraid to use it nowadays. It's very important, actually, that practitioners appreciate the reliability and predictability as well, because we're the interface between the users of the system and the Canadian Intellectual Property Office, and we provide an important legal service in that respect.

High-quality patent and trademark examiners and high-quality patent and trademark agents are very important to making the system run efficiently. We can be spinning wheels when the patent profession or the trademark profession and the Intellectual Property Office don't have the same view of how these things should work.

Slide 11 shows how there needs to be a balance between the incentive to innovate and competition. This is the “B” portion of our ABC. There are distinctive trademarks being refused because they're descriptive when sounded. Again, this is referred to in our presentation.

There is an ongoing struggle between IT industries and the patent office on the scope of patentability of business methods, and this is yet to be resolved and needs to be resolved.

Page 12 refers to an efficient enforcement mechanism, which is also required.

● (0900)

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

Mr. Mark Eisen: Thank you, Mr. Chairman.

The Chair: We're just a little bit over time on that. We appreciate your remarks.

We will now move on to Ms. Corbin for seven minutes.

Dr. Ruth Corbin (Managing Partner and Chief Executive Officer, CorbinPartners Inc., As an Individual): Thank you. Good morning.

My name is Ruth Corbin. I run an intellectual property research firm. I teach at Osgoode Hall Law School, in intellectual property. I'm a corporate director—you will see some of my remarks reflecting that background—and trained as a marketer. One of the reasons I raise that is because of the title of the presentation called “What's needed most is an IP State of Mind”. That's what I hope to leave you with today.

Remember when customer service was just something people spoke about? It took a whole reorientation of government and business until we understood what it meant to have excellent customer service and satisfied customers. It didn't happen just because we said it. That's what I'm proposing is needed, a reorientation of thinking, which I think individuals in the room can provide leadership for, and that is an IP state of mind for Canada that will allow us to take advantage of our most valuable economic resource.

The four themes I'm going to talk about are on this slide. I have six slides, and I hope to do them in six minutes. There are four things I want to talk about.

First of all, the best news is that extensive research is well in place, and it was sponsored by the Conference Board of Canada. It has taken over a year to complete, with extensive consultation with experts right across the country.

A second message is the need to change the conversation from the well-accepted innovation language to intellectual property, which you have heard about from my colleagues on the panel already.

The third creative suggestion I would invite government to think about is how to influence the culture of corporate governance in businesses. Government and business have been partners for a long time, yet surprisingly their intellectual property agendas are moving in different directions. It's quite interesting. They're not opposing directions, but ones that reflect a lack of vision for Canada.

Finally is a recommendation for government—if I have to leave you with something practical—and that is to exercise leadership through plain measurement: clear definitions and measurement of whether Canada is doing well or poorly and how our progress should be measured.

My first of four themes is to talk about the extensive research that is already available in the Conference Board report. I believe Monsieur Roy has distributed a copy of the executive summary, in which you will find the main themes. That report involved broad national consultation with experts and IP leaders, including every member of the panel represented here—Professor de Beer's colleague, actually....

For added credibility, it received an award of excellence for public policy impact from the Marketing Research and Intelligence Association. It was selected by Industry Canada and featured at a joint meeting between OECD and Industry Canada. It was on the recommended list of Industry Canada's library and knowledge centre. I tell you that to assure you it has endorsements of credibility for the investment the Conference Board made a couple of years ago.

There's no need to reinvent the wheel. The report has a history of international treaties, legislative changes, statistical analysis, and on page 64 the current regime in intellectual property.

The biggest thing is that everybody loves to talk about innovation. They argue about whether Canada is good or not good at innovation, and what you find is that they are talking about different things. I have taken this quote out of Humpty Dumpty, and one of the big issues there was that Humpty Dumpty would use a word to mean whatever he wanted it to mean when he said it.

I've found in my year of research that's what's happening in Canada is all good. We're all talking about things we want to happen, but we're talking about different things. I'm recommending that the conversation shift from innovation to intellectual property. Innovation is our most precious national resource, but intellectual property is what it takes to manage, govern, and organize it.

The recommendation I want to leave you with today, subject to questions you may have, is that in addition to defining innovation and stopping the debates about what it means, who's good at it, and whether we're succeeding or not, what we seem to need in Canada is a measurement directorate.

I don't mean to sound bureaucratic. There's a well-known saying that you can't manage what you don't measure, but also you get what you measure. If the country is aware of where our priorities are, businesses and journalists will respond to talk about Canada's progression in those areas.

● (0905)

One of the biggest areas of weakness is corporate governance of businesses. You may think it's hands off when it comes to businesses: let businesses, especially at the director level, do what they need to do. Suprisingly, intellectual property monetization is not measured systematically at the board level, nor is it even taught in director colleges, nor is it advised by our main securities regulators. It's something government can do to support where our weakest link seems to exist, and that is at the business level.

Finally, through a program of clear measurement the Canadian government would connect more directly with international organizations for harmonized policy and competitiveness tracking. Organizations such as OECD and WIPO, which talk about Canada, whether we're there or not, rank Canada and enable us to talk to them in a consistent language of measurement. That is what we seem to need most.

Thank you for your attention.

The Chair: Thank you very much, Madam Corbin.

Now to Mr. de Beer, for seven minutes.

Prof. Jeremy de Beer (Associate Professor, Faculty of Law, University of Ottawa, As an Individual): Thank you very much for the opportunity to be here today. I'm a law professor at the University of Ottawa whose work focuses on IP and technology innovation, but my views here today are my own, not those of my institution or my colleagues necessarily.

I studied this issue during undergraduate degrees in business and in law and during my graduate studies at Oxford. I practised law as counsel to the Copyright Board of Canada and continue to consult on IP issues with private companies in high-tech, law firms, government agencies, and international organizations, including WIPO.

I've published more than two dozen peer-reviewed articles and authored or edited several books about aspects of IP and technology innovation, and I lead or collaborate on numerous large-scale research projects funded by SSHRC, the IDRC, the European Commission, and Genome Canada.

Based on my research, I'd like to raise three points: first, evidence-based policy-making; second, IP management practices; and third, assessment methods and metrics.

First, on evidence-based policy-making, almost everyone agrees that the right IP framework could help to spur innovation, productivity, and growth, but it is far too simplistic to state that strong IP protection promotes innovation without understanding how. And that's why the work of this committee is so valuable. There is a general consensus among experts that the precise role of IP in innovation systems is highly variable, context-specific, and complex. So we need to inform our ideology and economic theory with evidence of actual business practices and real-world impacts in specific sectors in order to create an effective policy. That's why I echo calls made recently in the Jenkins report and in the Canadian International Council's report, “Rights and Rents”, for a high-level, independent, evidence-based review of Canada's current IP framework, toward the formulation of a nuanced policy integrated into an innovation agenda.

The United Kingdom, as just one example, has recently done this. I cite the Gowers review and the Hargreaves report as examples. Canada would do very well to follow these leads.

The second point, about changing management practices, is dealt with in a policy brief that I recently co-wrote for Genome Canada, analyzing three overlapping IP strategies actually used in practice by science and technology innovators. The focus here is on the life sciences, but the lessons are more broadly applicable to other domains of science and technology as well.

An orthodox model was to acquire as many intellectual property rights as possible in order to maximize commercial opportunities or to stockpile an arsenal to use as strategic leverage against competitors. Now there is a growing body of evidence suggesting that this model is often unviable or that it works only in specific sectors and for specific kinds of organizations. In the public sector especially, most technology transfer offices that have adopted this model can't even cover their operating costs with the revenues they generate.

Where traditional management models are failing, one popular alternative is freely revealing ideas or inventions or even raw data into the public domain. This is not altruism; this is entrepreneurship. Many Canadian firms make money or fulfill mandates with this business model, and many more use the strategy to save on the cost and complexities of acquiring, let alone enforcing, an IP portfolio. A related tactic in the business sector is tapping into the trend of open innovation. This does not abandon opportunities for IP protection. To the contrary, it uses IP in innovative ways, licensing to require rather than to restrict collaboration.

The lesson here for policy-makers is not to presume that all organizations would or should want to manage their IP in the same way. We ought not to create a one-size-fits-all framework, and the practical experience here of Canadian innovators and entrepreneurs shows that research, training, and education—not necessarily treaties and legislation—will equip Canadian companies, especially SMEs, to better exploit IP.

I'll turn to assessment methods and metrics. Because intellectual property management strategies are changing so quickly, we need to adapt the methods and the metrics we use to assess our IP and our innovation policies. This is my third and final comment.

● (0910)

As things stand, as Dr. Corbin pointed out, IP outputs are a substantial part of the formula that many organizations currently use to evaluate Canadian innovation. Intellectual property outputs form one quarter of the weighting of our D grade in innovation. That's attributable to our poor statistical performance in acquiring certain kinds of IP rights.

Unfortunately, the formula wrongly presumes that IP outputs indicate innovation. Innovation and invention are not the same thing. A true innovation has market value. A patented invention may or may not.

Statistics suggest that nearly half of issued patents are invalidated when they're challenged in court. That creates work for lawyers and bureaucrats, but in fact impedes innovation.

Low-quality patents can contribute to the proliferation of thickets, create uncertainty, and lead to anti-competitive practices that stifle innovation. The narrow focus on quantity, not quality, also naively implies that to induce innovation we need only increase IP protection, which could in fact make matters worse.

I submit that we need a more sophisticated analysis like the OECD and WIPO are working toward, with a much fuller range of assessment methods and metrics, including qualitative data.

In conclusion, my comments suggest that the IP-related strategies for Canada's innovation system probably don't involve many legislative reforms or new international agreements for stronger protection or enforcement. What is needed first is a comprehensive, independent, evidence-based review of our entire framework in the context of innovation policy. Only then can we consider some possibilities for meaningful, practical solutions, like better intergovernmental policy coordination, more streamlined application and adjudication procedures, and enhanced cooperation between the public and the private sector.

Thank you.

The Chair: Thank you very much, Mr. de Beer.

We'll go now to our usual rotation of questions, and to the government side, with Madam Gallant for seven minutes.

Mrs. Cheryl Gallant (Renfrew—Nipissing—Pembroke, CPC): Thank you, Mr. Chairman, and thank you to our witnesses.

Last week we heard that the courts were the only venue for enforcement of IP or patent law. In the views of your organizations —so this is for each of you—is the court system the most effective venue to guard IP rights?

● (0915)

Prof. Jeremy de Beer: Thank you very much for the question.

I think in practice the courts are the avenue of redress for people who feel their IP rights have been infringed. Many have called for—or recommended—a specific division of the Federal Court to be created, to deal with intellectual property issues on an expedited basis, with lower costs, and I would support that recommendation.

Mr. Mark Eisen: I think the courts are the authority when it comes to this. Parties that are prepared to spend that kind of money and that have unresolvable disputes they can't deal with by alternative resolution methods will have to resort to the courts. So with or without a specialized court, it is the best forum for that.

Mr. Graham Henderson: I would add that one of the recommendations that has come up repeatedly at all sorts of different levels and in reports is that there is an issue—and maybe this is why there's been a call for a specialized division of the Federal Court to deal with it—about education among judges with respect to intellectual property per se. I think it also applies, by the way, to the ranks of the prosecutors.

In an efficiently operating IP system, I think you're going to have a much more highly specialized group of prosecutors and courts dealing with the issue.

Mrs. Cheryl Gallant: So if we take enforcement to the international level, where you have offences occurring in different jurisdictions, there is the thought that those in the jurisdiction the case occurs in would be favoured. What are your recommendations—if any—in terms of the international forum when we have disputes between companies in different countries?

Prof. Jeremy de Beer: Well, this is a private matter. It's governed by the standard rules of private international law, so there's not a lot that this committee or the government could really do about it.

But it is true. Recent statistics suggest that in the United States, for example, local rights holders win 88% of the cases and foreign rights holders lose 88% of the cases. A common tactic for patent owners, for example, will be to commence litigation in multiple jurisdictions, hoping to get a favourable ruling so that first ruling will influence future rulings, especially in the Commonwealth. So the key to combatting this is probably not, realistically, any kind of an international agreement, but better education, training, and awareness, especially for our SMEs.

Mr. Michel Gérin: I want to add that because of the international aspect of disputes there is one failing in our system where Canadians are disadvantaged when they go into litigation, for example, in the United States. Communications between clients and their patent or trademark agents are not protected from disclosure in courts, while in the U.S. or other countries they are.

When they go into litigation in the United States—and this has happened to French companies and other companies—they're put at a disadvantage. There's a simple solution, a correction to the Patent Act and to the Trade-marks Act to rectify that so that they're on a level playing ground.

Mrs. Cheryl Gallant: Thank you. Do you have that recommendation?

Mr. Michel Gérin: Yes.

Mrs. Cheryl Gallant: Would you provide it to this committee?

Mr. Michel Gérin: We can provide it. It's not detailed here, but yes, we can provide it to the committee.

Mrs. Cheryl Gallant: All right.

Mr. Eisen.

Mr. Mark Eisen: I agree completely in all cases here.

I think one of the problems with harmonization of laws for obtaining patents, trademark registrations, and so on is that the courts do react so differently, but it is up to the private individual to decide where to commence the lawsuit, and that's just one of the strategies involved in enforcement.

Dr. Ruth Corbin: I wanted to echo Professor de Beer's comments that although you've asked about the courts and enforcement, one of the reasons the courts are so complicated and busy is because of insufficient education.

Many of the people I deal with just don't know what their rights are. The kids are downloading stuff from the Internet, and they just don't know—and their parents aren't so sure either. So we don't grow up with an appreciation for where the borderlines are for intellectual property.

Again, although I understand that your question is directed toward our justice system, our justice system would be less pressured if we had an understanding of the borderlines of intellectual property that is owned by individuals.

Mr. Graham Henderson: There were several recommendations in the 2007 report that dealt specifically with your question.

Mrs. Cheryl Gallant: Okay.

Mr. Eisen mentioned that the United States protects the rights of business owners whose IP has inadvertently been lost. Would that sort of protection apply to a company where the law firm had been instructed to renew patents on behalf of a client, and there's evidence to show that, but it neglected to do so? In the case that you described with the United States or the law for the United States, would that be the case where the person could have it recouped?

● (0920)

Mr. Mark Eisen: I believe it would.

There are two levels of rectification: there is rectification for unintentional abandonment, and rectification for unavoidable abandonment. And to my understanding—I'm not a U.S. attorney—as long as there is a bona fide intent and attempt to renew patents or proceed with examination, that can be rectified within a reasonable amount of time.

Mrs. Cheryl Gallant: You can provide that aspect to this committee?

Mr. Mark Eisen: We will provide information on that to the committee.

Mrs. Cheryl Gallant: The other aspect or hurdle to innovation that was mentioned was cost. Do you have any innovative way of reducing the patent cost without burdening taxpayers?

Mr. Mark Eisen: Well, it's an extremely difficult thing to do, because it's a very involved area. With patents, certain things have to be done in order to ensure, as has been said here before, that the rights holder gets the rights commensurate with what they've actually created, so it's a difficult thing to actually reduce costs.

I think there has to be a taxpayer burden to some degree for this, but costs are not all that high, either. For $20,000 to $25,000, a truly inventive invention can be patented in Canada and the United States.

Mrs. Cheryl Gallant: Dr. de Beer, you described that IP could be used as collaboration, as opposed to safeguarding an idea. Is there an example you could share with the committee on how that would play out?

Prof. Jeremy de Beer: Yes, certainly.

It's been well known that proximity and interaction in physical spaces facilitates innovation. Innovation does not happen when people are isolated from each other. The same principle applies in intellectual spaces or intangible spaces. If we focus too narrowly on simply acquiring intellectual property outputs and not monitoring what happens with those kinds of outputs, we're losing the opportunity to create knowledge networks.

This is the term that the OECD now uses. They don't talk about intellectual property or intellectual property outputs in the abstract. They talk about creating knowledge networks, because knowledge networks facilitate innovation.

The Chair: I'm sorry to interrupt you, and hopefully you'll be able to expand on that in the next round, but we're over time now.

We'll go to Madame LeBlanc, for seven minutes.

[*Translation*]

Ms. Hélène LeBlanc (LaSalle—Émard, NDP): Thank you, Mr. Chair.

Mr. de Beer, thank you for educating us on a fascinating subject.

It is extremely difficulty to acquire intellectual property and to keep it. For that reason, I would like you to tell us more about this model. Since 2007, we have seen incredible advancements in technology. At the end of your statement, you mentioned a concept when you were answering Ms. Gallant's question. Could you elaborate on that? Could that concept also apply to other industries in Canada, such as the more traditional sectors of manufacturing and natural resources?

[*English*]

Prof. Jeremy de Beer: I'll give you two concrete examples. The idea of open innovation has been popular across a wide variety of sectors. It's being used by Nike, General Electric, and Nestlé. But there are two particular examples in science and technology. One is open-source software, which is a very popular business model for companies to move away from a proprietary framework toward an open-source framework.

On the basic idea, there is intellectual property protection, such as copyrights and often patents, that protect software or code. But rather than using those intellectual property rights to prevent other people from using the same kind of invention, you issue a licence that says other people may use that software if they agree to reciprocal obligations to further share and grow the community.

This has been applied experimentally in the context of biotechnology. There's an organization in Australia called Cambia. They're running BiOS, the biological open-source project. The first step is to make patent information about agricultural biotechnologies more transparent and easier to access, so people know what is patented and what is not. It reduces transaction costs. Then they create a repository of agricultural biotechnological inventions that any entrepreneur can easily access and use if they agree to certain conditions. Some of the conditions may be financial, like revenue sharing, and others are not. We also see universities doing this. The University of Glasgow is an excellent example, as well as North Carolina and a number of others.

● (0925)

[*Translation*]

Ms. Hélène LeBlanc: In that case, do the partners determine the rules of the game? Is there some sort of legal framework?

[*English*]

Prof. Jeremy de Beer: No. The legal rules are mostly negotiated through contracts...but also social, cultural, and commercial economic norms.

The key lesson for policy-makers is to not presume that everybody wants to manage their IP in the same way. There are some very clever and sophisticated things the private sector is doing to work around the inefficiencies in the system. The key thing the government can do is provide awareness, training, and research to support the private sector to better manage their intellectual property rights.

[*Translation*]

Ms. Hélène LeBlanc: Thank you very much.

Mr. Henderson, I would like to know your take on what we just heard about a more cooperation-based intellectual property model, versus an output-based model.

I would like to hear what the other witnesses think as well.

[*English*]

Mr. Graham Henderson: Thank you.

I was on the steering committee that produced the OECD's recent study on knowledge networks, among other things. I should point out that while knowledge networks are part of an IP system, they're just part of it. That was very much the view of the steering committee and the OECD.

I don't think I disagree with anything the professor is saying about the importance of new routes and methods for exploiting intellectual property rights. But I differ in that I don't think if one person wants to choose a particular route—whether it's an open-source route or otherwise, where you're making information available freely, or for whatever purpose—it should detract from protecting, advancing, and enforcing the more traditional systems that still work and are still very necessary for the advancement of innovation.

The issue of collaboration is an important one, because it has been brought up as an example of something that can only really work in a sort of more open environment. In fact, the studies seem to have found—at least the ones that were made available to our committee at the OECD—that patents and a clear knowledge of who owns what actually encourages just as much collaboration as anything else.

I would urge the committee that while what the professor is suggesting is important and an interesting way of exploiting intellectual property rights and innovation, it's just one way. It doesn't mean we shouldn't take advantage of the many recommendations that have been made to this point by the past committee and many others.

There is a gap from 2007 to 2012, but I think that report is still fresh and has been built on by others since then.

Dr. Ruth Corbin: I think the debate has raised something that clarifies where the policy options are. Professor de Beer is right when he says a lot of junk gets registered. Until it's registered and defined as intellectual property—trademarks, patents, copyright, trade secrets...well, trade secrets can't be registered—it can't become monetizable. If you want to get the economic value out of intellectual property, it has to be monetized by business. Government has the option to invest in the process, which we do through our universities—we admire what they produce—or to help encourage the monetization, which will give us the economic prosperity that we seek through intellectual property.

In summary, what you have just heard is where the options are for government: the front end or the back end. Business, in my experience, needs the encouragement—a little more encouragement of the downstream monetization to help deliver the benefits to the country.

The Chair: Thank you very much, Madame Corbin and Madame LeBlanc.

Now we're on to Mr. Lake for seven minutes.

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): Thank you, Mr. Chair.

This is a fascinating discussion. I have way more questions than I'm ever going to get to.

I want to focus first on what I see as a disconnect between the type of conversation we're having today—conversations at a legal level—and the level of understanding of intellectual property among entrepreneurs, potential entrepreneurs, researchers, and inventors. What scares me the most is developing some form of regime where we take Canada's best and brightest and have them all working as lawyers—no offence to the lawyers in the room—instead of as inventors and innovators who are creating things. How do we find that balance to ensure we have a regime that makes sense and encourages innovation, but a regime that is not so complex that we need every second Canadian working as a lawyer to understand it?

● (0930)

Mr. Graham Henderson: I suggest it hasn't impeded other countries that have more sophisticated intellectual property regimes than ours. For example, it hasn't really impeded Japan. If you look at Japan as an interesting model, they have a top-down IP system. It's pushed right down from the presidency. In many ways it's like an IP culture in the way that RIM is an IP culture, by the way. It's an IP culture, and it has to start at the top. It pushes all the way down, and it becomes a priority throughout government. You're not necessarily creating rules and laws that are going to gum up the works. The education is designed—we found this as well at the CIPC. There is a real problem at the lower levels about awareness: what do I have to do, how do I do this, and where do I go? Obviously they found it at IPIC. We found it at the CIPC. I know CIPO is aware of it.

You heard from Sylvain Laporte last week. I think he's terrific. I think he has been a great appointment. I think he's going to take CIPO to another level, but it is going to involve some resources.

Back to Ms. Gallant's question, are these resources going to involve a burden on the taxpayer? There might be a slight burden, but the return on the investment could be incalculable.

Mr. Mike Lake: Does anyone else want to weigh in on that?

Mr. de Beer.

Prof. Jeremy de Beer: Yes.

I think training and awareness are the key. The Canadian International Council, in its report *Rights and Rents*, called for the establishment of an IP czar, who would have a much broader mandate than the current head of the Canadian Intellectual Property Office to expand training and engagement programs in the private sector, both practically oriented as well as high-level policy engagement. I would endorse that recommendation. I think it's a very good one.

That's the answer: create more awareness. One of the things we need to create awareness of is that intellectual property can be a very important asset, and a sword for all companies, including SMEs. It can also be a land mine, which companies can inadvertently step on. Research In Motion is an excellent example. It paid $612.5 million U.S. to settle a dubious lawsuit brought against it by a U.S. company. It threatened to shut down the BlackBerry distribution in the U.S.—$612.5 million U.S. to a company that didn't even have a website. It didn't make anything. All it did was troll for patents. We have to understand the dangers as well.

Mr. Michel Gérin: There is an entrepreneur from Chicoutimi who wrote this book, *Innover c'est bien... breveter c'est mieux!—To innovate is good...to patent is better!*

She started getting patents in her business. At first she was afraid. Then she made money out of it and wrote this book, describing the five myths that entrepreneurs have about the patent system. She explains in easy-to-understand terms that you don't need to be afraid. IPIC has been supporting a tour that she's doing in Quebec.

More of this can be done. It's just a question of fear. If you want to design a building, you'll hire an architect. If you need an engineer, you'll hire an engineer. If you need a patent or trademark, you'll hire an agent. It's no different from other areas of doing business.

Mr. Mark Eisen: I can just add that I think an equilibrium would have to be reached, because without the innovators there would be no work for the lawyers.

Dr. Ruth Corbin: What you're hearing is that we need an IP frame of mind in the country and that the government may be a first step and doesn't need to be thinking about tactical policies. I may sound trite, but it's not trite. In this case, it's to set a vision for the country and to set explicit objectives. You are the leaders in the country, and people listen. What Graham talked about in a corporate culture is that the president says something and the employees hang on every word. The government sets a vision, objectives, and policy and reiterates it and then, like environmental stewardship, it becomes part of the culture of the country, and you get the innovation and you get the focus on monetization, through leadership.

● (0935)

Mr. Mike Lake: Well, that was one question. I've got one more.

Mr. Henderson, you talk about the 2007 report. Of course it's a different situation here now in a majority government from in a minority government. We saw the challenges in moving forward the copyright legislation in previous Parliaments. Now we're actually debating it on third reading in the House.

What can we learn from our experience with the copyright legislation? It was very complex, with many different sides and points of view. Are we looking at a similar situation in terms of the broad range of viewpoints? As we want to understand this, who should we be calling before the committee?

Mr. Graham Henderson: Well, obviously there's going to be a broad range of voices you're going to want to hear from. As I've sat here listening to some of the comments being made, I can think of multiple witnesses. I would be delighted to submit to the committee a list of people who would be here in a moment, I think, if offered the opportunity to talk about the importance of a patent system or trademark enforcement or whatever it might be.

Whatever the reasons these 19 recommendations that were unanimously embraced and thought to be important at the time didn't come to fruition, well, we now have an opportunity to do that. I would suggest that with the current government, as fractious as it may seem to some people on the inside, we do sense that there's a spirit of working toward things. The House of Commons seems to be a more civil place these days. Despite differences, I would hope that when we start from the base that everybody basically seems to agree—these were unanimous recommendations—can we start to move forward with them? I've got to think that in the current environment maybe we can. But it's not just that. I should also say—

The Chair: Thank you, Mr. Henderson. I'm sorry, we're way over. I appreciate it. Unfortunately, the time is always the thing we have to deal with here.

Mr. Graham Henderson: I'm sorry. You're right.

The Chair: Mr. Regan, for seven minutes.

Hon. Geoff Regan (Halifax West, Lib.): Having paid my Barristers' Society fees in Nova Scotia this week, I want to say that I'm certainly pleased to hear the comment about more work for lawyers and that it's a good thing. You never know in this business.

Dr. Corbin, you talked about the importance of monetization, but you've also mentioned the issue of how to address new social norms that develop over time while copyright reform is stalled. When I'm thinking of cultural and ethical issues and how our society looks at intellectual property—because we have a lot of piracy—the culture says it's okay to download from Pirate Bay or a music sharing site for free: music, movies, what have you. There's a group of people in Canada who see this as virtuous.

In your view, what methods have been successful in changing attitudes toward piracy and changing the culture?

Dr. Ruth Corbin: The biggest success story I've heard of came from the lips of Colm Feore, one of our celebrated actors, when he agreed to be interviewed for the report. He believes in the sharing of art, and yet he understands the need to protect the artist's rights. He talked about coming into a room when his son was sending off downloaded songs to a bunch of his friends and didn't understand what was wrong with that. Mr. Feore said to him, “You see, you send those songs off to your friends, they send them to other friends, and somewhere along the line I can't get you that bicycle for Christmas”.

You've asked me what I've seen besides this entertaining story. It's parents understanding what the rules are. I think parents don't quite know. I think it's fair to say none of us really know what the rules are to teach our kids, but once we know what they are, as trite as it may sound, it's a way of thinking to engender respect from kids as they're growing up, but first by an understanding and a knowledge of what our rules are. Hopefully the copyright reform bill will now help people start talking about the clarity of the new rules.

● (0940)

Hon. Geoff Regan: I was going to ask what you would do about that, but I guess what you're saying is your hope is that the new bill will spark some discussion.

Dr. Ruth Corbin: Let's hope it's more than a hope. You don't want to just have empty chatter here, but a way of talking. Perhaps, again, it can start from government, education, communication programs, and interviews with journalists to get the laws and the knowledge in the minds of all of us, so we can begin to respect them.

Hon. Geoff Regan: It seems to me it's unlikely that the fact that the new bill is passed would spark the kind of discussion you're talking about, but if there are prosecutions and that becomes public, perhaps.... I don't know what's going to spark that kind of discussion in families.

Mr. Henderson, you're shaking your head furiously.

Mr. Graham Henderson: Yes, because I don't think there are going to be prosecutions.

Hon. Geoff Regan: Fair enough.

Let me go on.

Professor de Beer, I just mentioned the Pirate Bay. I understand there is a recent *Forbes* article that talks about the fact that the most downloaded show this year is an HBO show called *Game of Thrones*, which you may be familiar with. Apparently it's been downloaded more than 25 million times since early April through BitTorrent. This goes back a bit to the question of not only culture but also what the models are that work and don't work. Some critics have said that HBO is taking the absolute wrong model by trying to put this on and charging $4 per viewing and so forth, and when it's been downloaded 25 million times at $4 a pop they've lost theoretically $100 million. I don't know if that's a proper way to measure it. Maybe you can respond to that.

I guess the question is can we, as legislators, craft legislation that would not only break down impediments to innovation but also provide information to companies to ensure they have revenue streams?

What are the solutions to that?

Prof. Jeremy de Beer: I actually am familiar with the program because I subscribe to HBO. My wife keeps telling me to cancel the subscription, but I keep it anyway, because I love that program.

First, I have to emphasize that it's a very different issue from the other aspects of science and technology innovation that we've been talking about here today. So the problems facing HBO are very different from the problems facing an SME in computer engineering in Waterloo or innovation in extraction of bitumen from the oil sands or something like that. They are very different.

What I would urge the committee to do is not to conflate the moral and economic and policy reasons to address illegal downloading from BitTorrent with the IP strategy to deal with innovation in science and technology. Separate those issues.

There is one area where they overlap, though, and that is in the facilitation of legal alternatives. I believe that the key to facilitate market alternatives is to simplify and streamline licensing procedures.

I happen to teach a course on the digital music business. If you were an entrepreneur trying to establish a new legal site to sell downloads, you would find that the process is so complex because there are so many different rights holders to deal with. If we could work toward streamlining and simplifying that process.... I appeared before the Supreme Court of Canada in a case last December arguing that the court should do precisely that, and hopefully it will. That is the message: streamline.

Hon. Geoff Regan: That reminds me of what Mr. Henderson said. I want to ask him how he would streamline the patent approval process. It's not quite the same thing, but you did—

Mr. Graham Henderson: To bring us back to that, I agree there is a real distinction between the two. I actually think we dealt with the one, in large part, through the copyright reform act. In a certain sense, that job can be pushed off to one side. There are things we have to follow up.

As far as patent reform goes, I'm not a patent lawyer. That question might be better directed to my friends here. But I would say that at the CIPC we have a very big umbrella. It includes a lot of companies for whom patents are very important. It was one of my specific recommendations. But you should call them.

Hon. Geoff Regan: If we have time, you directed the question to your colleagues, so I'll let them consider it.

The Chair: No, I'm sorry, Mr. Regan. We're over seven minutes. If it were solely up to me, Mr. Regan....

Now we're on to five-minute rounds.

Mr. Carmichael, go ahead for five minutes.

Mr. John Carmichael (Don Valley West, CPC): Thank you, Chair.

Thank you to our witnesses for appearing today.

We have so little time. Let me start with Madame Corbin.

In your opening remarks you talked to board governance and some of the gaps or the ineffectiveness. I wonder if you could go a little deeper into that. Is it strictly an education issue, or is there more to it?

● (0945)

Dr. Ruth Corbin: First of all, the data show that business is the weak link in our innovation. That might be surprising. We are praised for our investment in knowledge industries. But business itself is not keeping up with the business productivity of other countries.

Why is it not happening? In my experience, it is not happening at the board level because boards of directors themselves are not properly tuned in to the immense value of intellectual property. Intellectual property is now easily between 70% and 80% of the saleable assets of most modern corporations, even corporations not in the business of creativity. Yet because it's invisible, as our first questioner asked, it's hard for boards to get around it.

Here's what's straightforward to do: put it on the agendas of boards of directors colleges. It's not on the Rotman agenda, and it's not on the McMaster agenda. It's not on the governance guidelines of the TSX or of the securities regulators in each of the provinces.

You get what you measure. You tell people this is what the performance metrics are, and that's what you will get back. It's as simple as that. It's worked for businesses ever since they discovered that mantra.

Mr. Graham Henderson: But it's also businesses' job.

Mr. John Carmichael: Right. But your point is it becomes a responsibility of boards, then, to get educated, to understand it, and to then go to work and commercialize it, develop it, etc.

Carrying on from that—and I'll open it up to the whole group—how can we encourage businesses to be more deliberate and to tap into the revenue potential they have in their existing IP portfolios? I haven't read them, but I will gladly take copies.

Mr. Graham Henderson: That was the reason Lucas and Manley put together the Coalition for Action on Innovation, which published its report in 2010. There is now an association, the Centre for Business Innovation, which was opened under the auspices of the Conference Board of Canada. I'm a steering committee member there. That was an activity initiated by business. Business stepped up to the plate and said, “Notwithstanding the fact that there are things government can do, there are things we have to do to be better at this”.

Mr. John Carmichael: Does anybody else have a comment?

Prof. Jeremy de Beer: I'd like to follow up on Dr. Corbin's point about the metrics, because it's absolutely right.

One of the things government can do is to help us to take more nuanced measurements. Simply counting outputs, such as patents, cross-border trademarks, or patents per population, is not very helpful. We perform very poorly because we don't do those things, but we don't actually know what we do instead. It's entirely possible that Canadian innovators prefer trade secrets to patents. So all of that innovation that's facilitated by trade secrecy would not be captured in the data. We don't know that.

Far more important than the patent, which is merely an artifact of an invention, is the process by which the patent arose. Who are the inventors on the patent? Which countries are they from? What is the relationship between the scientific literature coming out of universities and the disclosure in the patented invention? How is that patent licensed to other actors? What is the revenue stream? What is its impact in the market?

Dr. Corbin can do some very sophisticated research on these kinds of market questions, but we currently don't calculate this kind of.... We don't have this data. We don't know. A better understanding of those kinds of questions will help us to really tailor our policies to help the sectors that we want to help most.

Mr. John Carmichael: Excellent, thank you.

Do I have a few minutes?

The Chair: About 30 seconds.

Mr. John Carmichael: What sorts of programs and steps, then, can we take to engage SMEs in the IP system, and do we need to communicate it on a much better level?

The Chair: Very briefly, please.

Mr. Graham Henderson: Yes.

Dr. Ruth Corbin: Mr. Regan has said that communicating the bill probably isn't going to happen, because it's boring. You'd think it's boring, the language, so let's find a way to do it. Let's make it in the public conscience.

Oversimplyfying, leadership through measurement—a measurement directorate by the government that would set the standard for Dr. de Beer's comments is something practical that government can do.

● (0950)

Prof. Jeremy de Beer: That's the CIPC's recommendation for an IP czar. That's precisely what a czar would do.

The Chair: Thank you very much, folks.

Now to Mr. Harris, for five minutes.

Mr. Dan Harris (Scarborough Southwest, NDP): Thank you. And thanks to everyone for coming.

My head's practically exploding with questions right now, whether I want to go on with digital music and digital rights holders, how we ensure that their IP is properly remunerated, or do I go off on knowledge-based economy or on the issue of controls, or for an elaboration on evidence-based policy-making reviews, or the lack of IP literacy.... I mean, the directions are endless here.

However, what I've heard from everybody is that we really do need to find that nice balance, that sweet spot in IP that will offer the appropriate types of protections while not stifling any of the innovation.

Out of all of those different options, last week one of the witnesses who came forward mentioned that when a company is sold, let's say, to an American company and they have an IP, that would be subject to review under the Investment Canada Act, but if it's only the IP being sold that's not subject to review. Is this an area that any of you think may be worthy of looking at further?

I'll quickly go across for an answer.

Mr. Graham Henderson: I'm not sure what the answer to that would be. I didn't know that was the case.

Dr. Ruth Corbin: It's an interesting question. Nortel was bankrupt and sold its intellectual property for $8 million, which makes the point about the value. It's an interesting strategy. I think not everyone has cottoned on to it yet.

Mr. Mark Eisen: I think it's something that could be looked at, but you'd have to appreciate that if there are restrictions on the sale of a piece of property, the value of the property is diminished simply by virtue of the restrictions.

Prof. Jeremy de Beer: That's an excellent point. Some countries have done something slightly different. Japan and Korea specifically have created sovereign funds, where the government will acquire strategic patent portfolios that they recognize are of interest to their domestic industries, including, for example, SMEs. They will create a pool that helps their SMEs and entrepreneurs access those technologies, like a sovereign investment fund except in patents. So had the Nortel case happened in Japan or Korea, that would have been exactly the type of environment where one of these funds would have come in or could have come in to protect the intellectual property and to keep the investment in Canada.

The issue is extremely important, because, unlike other assets, if the intellectual property leaves the country there are no jobs necessarily remaining behind. If you sell potash, somebody still has to pull it out of the ground. But if you sell Nortel's patent carcass, which actually went for $4.5 billion—6,000 patents, $4.5 billion, crazy, but a unique market—then nothing's left. But if the government is to invest public funding into companies, SMEs especially, to help them build up patent portfolios, we need to make sure that their exit strategy or bankruptcy plan will not see those portfolios leaving the country. That is very important.

Mr. Dan Harris: To quickly follow up on that, let's say the Nortel situation had happened in Japan in the circumstances you're speaking of. Would that have brought all that intellectual property out into the public domain within Japan so that all their businesses would have access to it?

Prof. Jeremy de Beer: No. The intellectual property would still be protected, but what would happen is it would be managed and controlled by an entity with domestic interests in mind. I'm not saying that would have happened in Japan, but Japan and Korea and the EU are examples of jurisdictions that have started to think creatively like this.

Mr. Dan Harris: It's a different approach from the open source software?

Prof. Jeremy de Beer: Yes, and that's an important point. Open source does not abandon IP protection. You acquire IP protection, and then creatively license it.

Mr. Dan Harris: I've been a big user of open source software in all the various IT endeavours I've used. You can either choose to pay for the software or pay to further develop it and make it what you need.

How much time do I have left?

● (0955)

The Chair: You have 26 seconds.

Mr. Dan Harris: In 26 seconds, why do we need an evidence-based policy review?

Prof. Jeremy de Beer: Because the issues are so complicated, we have to move beyond banal rhetoric and just saying we need a strong IP policy. Everybody agrees. The question is how. That's what an independent evidence-based review will accomplish.

Mr. Dan Harris: Thank you.

The Chair: Thank you very much.

Now we'll move on to Mr. McColeman, for five minutes.

Mr. Phil McColeman (Brant, CPC): Actually, first of all I'd like to thank all the witnesses for being here. I was going to go down a different line, but Dr. de Beer, let's just expand on that question of "how".

Obviously, across the group here today we have a very learned group of people who've looked at this, studied it from various angles. You must have a sense of what the answer to that question might be. Could you share your views as to what the "how" is?

Prof. Jeremy de Beer: Yes. The key is to increase certainty and reduce transaction costs. Those should be the overarching principles of intellectual property policies—increase certainty, reduce transaction costs. That means when you go to get a patent, we need to create a system where you're reasonably assured that the quality of the patent is high enough that it's going to stand up in court.

We're not just encouraging people to go out and get patents because they can or we think it's good for them. You get a patent because you deserve it. When you get it, you know it's good. Then you're going to reduce the costs of litigation, you're going to facilitate licensing. There are a variety of concrete strategies that I'd be happy to follow up on about how to do that.

It's increasing certainty and reducing transaction costs that will make the market work.

Mr. Phil McColeman: Excellent.

All of you have had a common thread of education, training, public awareness—cultural change, you might call it—in terms of how not only SMEs but the public at large view this issue. Do any of you have anything beyond the traditional ways of communication and training that we have?

Ultimately, as governments work, in practical terms it boils down to a few talking points. What are the talking points?

I'll start with Dr. Corbin.

Dr. Ruth Corbin: Here's how you could help in a big way—use the words "intellectual property". I'm just going to leave you with one big idea. Nobody knows what it is, and yet here we're talking about what we believe to be one of the most important things in the country.

One time, when I spoke to the president of the Institute of Corporate Directors, we spoke for about an hour. I thought she was getting excited about the idea. When she left, she said, "Well, thank you, Ruth. I'm sure our lawyers will know what you're talking about."

If you could start to use the words “intellectual property” in your public addresses so that they become part of our common language, so that people say, “What does that mean?”, so that they start to talk about it, you would do us all and the country a great service.

Mr. Phil McColeman: Mr. Henderson, do you have any views?

Mr. Graham Henderson: I agree with that.

Again, I think there's a large role for business. If you look at the various accelerator centres, I think that type of initiative is extremely important in order to promote the diffusion of ideas.

I think CIPO, I'll go back to that, has to be empowered. I think it has to be expanded. I think it has to be provided with more resources. I think the U.S. has an IP czar. Our having an IP czar is important, as is the intellectual property council we talked about. Intellectual property is important to all departments of government.

I just want to add one thing about evidence base. There are 197 footnotes in the road map for change report. There are 134 in the time for change report. There is an enormous amount of evidence that is already out there. I don't know that we really need to go about reinventing the wheel. Ruth actually has assimilated all of it.

I would be cautious in committing the government to lengthy, years-long studies of an issue that really has been studied to death around the world already.

The Chair: I think Mr. Gérin had a comment on your question, Mr. McColeman.

Mr. Phil McColeman: Go ahead.

Mr. Michel Gérin: There are simple approaches as well. We're trying to do one with the provinces. When somebody is starting a business and goes to the provincial government to ask what they need to do to start their business, it's simple for the person to say, “Maybe register your name as a trademark so you don't lose it later,” or “Get a patent if you have an invention, before you start selling it”—just that basic approach.

Mr. Henderson mentioned CIPO. It's probably the only group right now tasked with raising awareness. The problem is it's not their core mandate. As revenues drop if there are fewer filings, that's the first place they cut, the outreach program. When revenues come up, then they'll do more outreach. We need some form of stable funding for that awareness to happen.

● (1000)

Mr. Mark Eisen: I think part of the issue is that it's an extremely complex area. I think I read that on Thursday somebody used the terminology of drinking from a fire hydrant.

We have to focus the discussion on the uses, advantages, and bottom-line benefits of intellectual property to the business, and not worry about the nuances, the subtleties, and dotting the *i*'s and crossing the *t*'s, which are really things that can be dealt with once the benefits have been determined.

Prof. Jeremy de Beer: I also think we need to focus not only on the benefits, but on the risks and the perils. If business leaders know that poor intellectual property management can sink them instead of save them, it puts fear into them, and they had better understand it. We're starting to see this. You can't read a weekly issue of *The Economist* without reading an article on patents or copyright, or some kind of IP issue.

I think it matters who we target.

The Chair: I'm sorry, sir, we're over time. Thank you very much.

Now on to Mr. Masse, who was talking about the intellectual property of Mr. Lake just a moment ago.

Mr. Brian Masse (Windsor West, NDP): That's right. His catch phrase is “trademark”, so we won't use that any more.

I want to start by noting that the response to the 2007 report was miserable. We had unanimous consent, and we also pushed the issues a little bit further, and we've only seen a couple of movements.

Recommendations 1, 2, 3, 4, 5, 6, 7, 8, and 16 are all of the Criminal Code. Recommendations 9 and 10 are regulations. On recommendation 11, the CBSA has been cut now by more than $100 million, which required more resources. For recommendation 12, we now have the CBSA excluded from the Shiprider program. Recommendation 13 is regulations. In recommendation 14, the RCMP needed more resources and jurisdiction, and recommendation 15 is the same with Health Canada.

When we were looking at some of the issues at that time, it wasn't just about the knock-off batteries that have mercury going into our landfills. We were looking at things like panels in hospitals that were made illegally and were deficient, and so forth, and actually had the Canada standards stamp on them. So it's quite serious. We're talking about airplane parts, we're talking about automobile parts, and a whole series of things.

My selfish concern comes from a manufacturing sector that's been battered. In 2005 we had an $18 billion manufacturing deficit of exports. It's now $80 billion. So what I was focused on, as well as the public safety side, the Health Canada side with regard to food products and so forth, was also expanding our capabilities in manufacturing again.

Where do we go from here? I've heard the word “czar”. Dr. de Beer, you talked about a panel, a commission, so to speak.

I still want us back in the game of manufacturing. How do we get there? I would ask Mr. Henderson to start, and go across the panel. I want to hear what we can do here, right now, to get us back in the game of manufacturing, because, selfishly, those value-added jobs are disappearing across this country, and innovation, intellectual property, whatever you want to talk about.... I know you want us to talk about those words, but our constituents sometimes roll their eyes back in their skulls, and it's not a topic they really get engaged in. But they do understand jobs, and I really believe this is entirely connected to jobs. I'd like to know how we get there right now.

Mr. Graham Henderson: Yes, it is connected to jobs.

Implementing those recommendations is not expensive. The IP crime task force cost something like $25 million.

I think what we have to remember is that these are billion-dollar problems that we're trying to solve, and I think we all, all taxpayers, share a desire not to create additional tax burdens. Nobody wants that. But if the government is making smart investments in infrastructure that are going to create jobs and safeguard our marketplaces, then I think that's a wise investment of taxpayers' money.

Implement these here. That means start there and develop. I think you're right. I think it's going to translate directly into jobs.

Dr. Ruth Corbin: The main thing to realize is that manufacturing companies themselves have more than a majority of their asset value tied up in intellectual property. I don't see the inconsistency.

You have manufacturers, but you recognize, as a leader of that organization, that the know-how, the trademarks associated with the products you're producing, possible patenting, and possibly copyrighting of certain of your working documents are where your added value is going to be.

I actually find that this IP discussion is the secret to getting those jobs back, to enhancing the value of our manufacturing companies, and is not the competitor to it.

● (1005)

Mr. Mark Eisen: My understanding is that innovation leads to jobs, so incentivize innovation every single way you can. Liberally grant rights and patents and trademarks. As long as they're well deserved there should be no reason not to grant these things. And they should be funded. They should be funded to some degree at the taxpayer expense, because they result directly in jobs.

Prof. Jeremy de Beer: I actually disagree. I don't think granting IP rights liberally and basically seeing that as a panacea for the problems of the manufacturing sector is the right strategy at all. In fact you're more likely to get more low-quality patents. If we just basically tell everybody to go out and get patents, it costs them money, or taxpayers' money, and what does it really accomplish?

I do agree strongly that we need to focus on innovation, because innovation is the key to enhancing productivity. There is a role for the IP system to play here. Dr. Corbin mentioned that branding is very important. But manufacturers, especially SMEs, may not know the value of the trademark system to promote and protect their brands. Sure, there's a problem of counterfeit goods and enforcement, but that's not really the root of the problem for the manufacturing sector either.

One of the things they could do is have better training and awareness and education. The Canadian Intellectual Property Office, and in fact IP offices worldwide, have databases disclosing how-to manuals for all kinds of innovative products and processes. Patents expire 20 years after the application, so there's a whole body of knowledge, technical knowledge, technical specifications, basically how-to manuals, in patent databases. Manufacturers could tap into that, find out whether the invention is in the public domain, and if so, use it, and if not, find out who owns it and start to negotiate collaborative agreements to share technology. There's a wealth of information there that could be accessed.

The Chair: Thank you, Mr. Masse.

We're now on to Mr. Braid for five minutes.

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

Thank you to all of the witnesses for being here this morning and for your excellent presentations.

I'm hoping to reach most of you with my questions, so we'll get going.

Professor de Beer, there was a reference earlier to perhaps considering the merit of a specialized court in Canada. Can you point to any examples of effective specialized courts in other jurisdictions that we might consider?

Prof. Jeremy de Beer: The problem with the question is "effective" specialized courts. A number of other jurisdictions have created courts like this. The U.K., for example, has created the U.K. Patents County Court, which has failed to develop the type of expertise that many had hoped it would, or really solve the problems with access to adjudication.

I think the key, and this is something that a task force or a independent review could do, would be to assess the success of different countries that have tried to create this, comparing the U.K. Patents County Court to the U.S. Federal Circuit, and to try to create a system that's based upon the best of all of those. But that type of evidence or that type of information simply doesn't exist. That study hasn't been done.

Mr. Peter Braid: Great, thank you.

I have a second question for you, Professor de Beer. In your presentation you seemed to focus on the need primarily for more research training and education as an important objective in this area. Could you elaborate on how we might do that, and again point to any examples in other jurisdictions of effective research, education, and training programs?

Prof. Jeremy de Beer: In terms of outreach and training, I think the Canadian Intellectual Property Office is starting to do some very good work, but they've got a narrow mandate and little funding.

I offer a course for the Canadian trade commissioners through the Department of Foreign Affairs and International Trade. Every Canadian trade commissioner who goes abroad to work with Canadian businesses is now being trained on awareness of intellectual property issues. So far it's done on a relatively ad hoc scale; we've done this maybe a dozen different times. I don't know if that's going to continue, given budgetary constraints. So really we need to focus on investment and outreach.

In terms of research, I think we need to focus on applied research, and not understate the valuable contributions that organizations like Genome Canada, SSHRC, and NSERC are making in understanding how we move science and technology innovation from the lab to the market. They're doing great work, and we should continue to support it.

Mr. Peter Braid: Thank you very much.

Madam Corbin, you mentioned that currently Canada isn't very well coordinated with the OECD and WIPO and that we need to align more closely. I was a little surprised to hear that. Could you provide an example of how we're not aligned?

● (1010)

Dr. Ruth Corbin: I didn't mean to say that we're not aligned. My remarks were regarding the ranking and measurement systems that they have, where Canada is ranked and applauded and not applauded on certain of its performance measures, and Canada is not responding with an integrated, confident system of performance measurement everybody agrees on. That is what I found in my year of research, that everybody is using the same language, but like blind men feeling an elephant, they're all talking about different parts of it, measuring different things in different ways, and wielding statistics like weapons in public forums that end up giving different stories. That's where we could be part of the international discussion on measurement performance and economic competitiveness.

Mr. Peter Braid: Okay. Great.

Mr. Eisen, I will magnanimously take Mr. Regan's unanswered question. Could you take a crack at how we can streamline the patent application and approval process?

Mr. Mark Eisen: I think one of the most important things is to have skilled and experienced examiners at the patent and trademark office and in the profession, the intellectual property profession, to ensure that we both have the same notion of what is patentable or what is registerable as a trademark. We don't want to be working at cross-purposes.

The Amazon.com case that came down recently, and on which there's still a consultation going on, is an example of the profession and the patent office working at cross-purposes. It's extremely inefficient, resulting in many office actions and spinning wheels. I think that would be my number one priority.

Mr. Peter Braid: Mr. Henderson, what is the cost to the Canadian economy of IP crime and counterfeiting?

Mr. Graham Henderson: It has been variously estimated, but you can be certain that it is in the billions. I think I remember the Ontario Chamber of Commerce doing a study that suggested it was $9 billion for Ontario. If I recall correctly, the road map for change, the Canadian Anti-Counterfeiting Network, put it in the $20-billion range.

Mr. Peter Braid: Thank you very much.

The Chair: Thank you, Mr. Braid.

Now on to Madame LeBlanc.

[*Translation*]

Ms. Hélène LeBlanc: Thank you, Mr. Chair.

I want to pick up on the Canadian government's investment in innovation, especially through federal R and D programs. They often give rise to innovations and ideas that sometimes fall under the intellectual property category.

Do you think the current IP regime does enough to protect Canada's investments in Canadian companies, foreign companies or those bought by foreign interests? Does the intellectual property remain in Canadian hands so that we can benefit from it?

We talked about Nortel earlier. We could also cite other examples where the Canadian government invested in companies that ended up growing and being sold, resulting in Canadian intellectual property moving outside the country. Perhaps Ms. Corbin could answer first.

[*English*]

Dr. Ruth Corbin: I think we have to clarify that innovation is not intellectual property. Investing in innovation is investing in the hope that it may become intellectual property. It's not bad, but it's different from saying we have a regime that we are working to define and monetize.

Is our investment strategy on innovation producing intellectual property benefits? Maybe, but it's not directly attending to what I understand the committee wants to do.

Mr. Graham Henderson: I'm not sure I agree. I think the distinction is between invention and innovation, not intellectual property and innovation. The governments around the world have become very good at targeting investment. If you look at how the Government of Canada and the Government of Ontario invest money in intellectual property, you find that an enormous amount of it goes to universities. It's more directed towards invention.

Innovation requires a commercial component. It's a marketable service. It has value or it's a marketable product. I think intellectual property underlies both of them, because that's what creates the market. Once you have property in something, then you have a marketplace.

● (1015)

Prof. Jeremy de Beer: I agree with Mr. Henderson on that point. It's innovation that we should be concerned about. IP is a means to innovation, but not the only one. The distinction in the literature—and there is a huge literature on innovation—is that innovation has market value and intellectual property may or may not. It's just an output.

We have to be careful not to focus our policies on getting more intellectual property rights. We should focus on better IP, not more IP rights. Better IP will drive innovation, which has market value. That is what drives jobs and economic growth in all sectors—the knowledge economy, manufacturing, everything.

[*Translation*]

Ms. Hélène LeBlanc: Thank you for that clarification.

[*English*]

The Chair: Mr. Eisen.

Mr. Mark Eisen: I'm not sure what safeguards are in place. I think the industrial research assistance program has certain conditions on the use and ownership of funded intellectual property. But I have to say that in this context the intellectual property is much more key, because you're talking about monopoly. You're talking about protecting the interests of the investment that went into the innovation.

There are many countries where it's a lot cheaper to make products than it is in Canada. The only way you can protect those interests through a monopoly is through intellectual property of one form or another.

[*Translation*]

Ms. Hélène LeBlanc: Very well. I am going to have to think on that. In any case, thank you for the clarification.

One of you—Ms. Corbin, I believe—mentioned corporate governance. I would like to hear more about that, especially about the incentives that would make those kinds of things possible.

[*English*]

Dr. Ruth Corbin: What incentives would make that happen? Mr. Henderson said earlier that it's business's responsibility, and they had better be working on it, and he's given examples of it. What can government do to encourage it? One idea is to promote what's important to them.

I was on a board of directors of Toronto Hydro with the late Mr. Layton. Many questions he turned to the subject of environmental protection. You could be asking about workers' compensation, and somehow he would bring it back to environmental protection, until we got it. He had clear policy ideas that began to infuse the culture of the board.

That's one way you can do it. When you speak as members of Parliament, give business direction.

Here's another thing you can do. Bring it to the attention of regulators so that when they advise businesses, corporate governors, and directors with liability about what they have to do to mitigate the risks to their corporations according to such and such standards, they will understand that the risk management of intellectual property is one of the standards.

Remember that the TSX had 13 guidelines from the Dey report, and intellectual property wasn't among them, and it still isn't among them. That's where government can help business think the right way.

The Chair: Thank you, Madame Corbin.

Thank you, Madame LeBlanc.

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

Mr. Lee Richardson (Calgary Centre, CPC): Thank you, Mr. Chairman.

This has been fascinating. Thank you. It's been a very impressive panel. I think you bring a lot to it, as you have in the past.

I'm thinking that there seems to be a broad sort of agreement on the intent of what needs to be done here.

I was following Mr. Masse's question with regard to the 2007 report and the recommendations that flowed from it before it got to be, in Mr. de Beer's view, just more banal rhetoric.

I guess I'm looking to places where we can take some action.

I only have five minutes, so rather than broadly going into what action needs to be taken now, I'd like to pursue recommendation 11 from that report. More specifically, I'll ask Mr. Henderson how you think allowing CBSA to have ex-officio powers would benefit Canadian businesses and consumers.

Mr. Graham Henderson: The lack of ex-officio powers, and I'm not an expert in the area, essentially means that border service agents don't have the power, on their own, to detain suspected counterfeit goods. It requires court orders. If it's Nike shoes, they can't communicate with Nike. If it's Louis Vuitton purses, they can't communicate. If it's suspected counterfeit auto parts, they can't communicate. That presents a huge problem. Those powers exist throughout the EU and throughout most of the rest of the world. It's one of the glaring areas where our border service agents simply aren't empowered. Frankly, if we want to gain access to, for example, the European trading bloc through the proposed comprehensive economic and trade agreement, we're going to have to do it anyway.

Here was a recommendation. It was actually ahead of the game. If we'd implemented it back in 2007 or 2008, it wouldn't be an issue on the table with the EU right now, but it is.

● (1020)

Mr. Lee Richardson: Are there other recommendations here? Here's one very specific one we have to get moving on. Why aren't we moving on these things, and why are we now bumping into these problems as we try to keep up with our international partners?

Mr. Graham Henderson: I think that's important. We're trying to keep up. We're trying to level the playing field. We're trying to harmonize our laws with those in the international community. But there's no question that it is a frustration. My experience with government is that unless you keep putting your shoulder to the wheel, it takes time. It can take years. So here we are again, shoulders back on the wheel, and we're pushing.

Mr. Masse pointed out that some of these are simply regulations that could be done in no time. Others require money. In some of the studies we've done, we've said that it's going to cost $25 million and you're going to solve a $20-billion problem. It sounds like a good investment to me.

I think what would be great would be for this committee to take these recommendations—and they're only part of the problem—and work with them.

Mr. Mark Eisen: I think they're good recommendations. There's certainty validity to a lot of them. There has to be a balance. Everything about this is balance. Implementing recommendations creates a push on one side—say on the brand-name side—that has to be somehow countered with the ability not to push too hard. An example is cost awards in the case of a wrongful seizure of goods. Without those types of things in play, you can create a very unbalanced situation. So I think the recommendations are valid, but they have to be looked at as a balancing act and not just as straight help, one side of the story.

Mr. Graham Henderson: No, there's best practices too.

Prof. Jeremy de Beer: I would just add, in that particular context, that one of the concerns is abuse of process when it happens. If you can deal with those concerns, that may lubricate the wheel and allow us to move forward on some of these recommendations.

On other specific recommendations, the issue is far more delicate. Oftentimes IP policy is driven by the pharmaceutical industry, and then you have very complex trade-offs between what is currently a vibrant generic industry in Canada and brand-name manufacturers, and their implications for provincial health care funders. Those are far more complicated and perhaps not quite as easy to deal with.

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

We're going to suspend in a moment for some business. I wanted to ask one question, though. As I heard all of the members asking questions and I heard the answers, there seemed to be two strong streams. One was innovation and creating more intellectual property to monetize that, to create jobs, etc. And there's another really strong aspect of protecting intellectual property presently.

We talked about education, etc., and Mr. Henderson made the good point regarding the separation between the whole notion of a movie being downloaded, etc., and what we're talking about here, except that it's almost a good education point in the sense that people can understand it. That's one of the things that I see: a good law has broad social consensus and is obeyed.

We talked about parents talking to kids, but I see a lot of parents selling hot Rolex contraband, sports-branded memorabilia. There seems to be a real need for strong education at the grassroots level. I'm wondering if there's any data out there at all. There was a strong education program on the movie industry. You would walk in and see a movie, and then they'd say if you do this, we'll prosecute you. Was there any measurement done? Has there been any broader awareness? Have they seen a reduction in the downloading or stealing of movies since they did that campaign and we actually introduced stronger legislation?

● (1025)

Mr. Graham Henderson: Well, I can give you an example where legislation was introduced and it had a profound effect on the marketplace. It wasn't film, but it was music. The legislation in question was the French law that was introduced to bolster the intellectual property regime in terms of protecting music. An economist from Wellesley College in the United States did a study that measured the impact at the introduction of that law. What he found was there was a profound change in consumer behaviour. Almost 25% of the population went from taking to buying, and it was almost instantaneous. Interestingly, when the law was introduced—the law was called Hadopi—one of the searches that he did was a search on Google. And he found this massive spike at the time the law was introduced. People were trying to learn about "What the heck is Hadopi and what does it mean to me?" What it meant to a lot of them was it's time to migrate to the legal marketplace.

This, by the way, wasn't a total surprise to me, because research that we've done over the years suggested that there's a very significant.... Canadians don't wake up in the morning thinking they're going to steal something. They may just end up doing it. Whether it's a Louis Vuitton bag or whatever, they may just do it. I don't know. But they don't wake up thinking they're going to do it. What we found in our research was that a significant number of them —if they were educated on the issue and if there were meaningful consequences—would shift into the legal marketplace. That's part of the thing that we're trying to recapture here. It's not just about promoting the supply of IP, which is a very important role of government. It's protecting the demand for it.

The Chair: I think you're correct. It ended up mostly on our shoulders, but I know for the copyright bill, in each iteration that was tabled there were lots of inquiries. There was a strong sense of consumer demand on that.

There's a lot of education happening through our constituency offices on the fact that when people make something, even if it's a concept, a song or an idea, they have the right to remuneration from that.

Thank you very much for your testimony.

We need to suspend for a couple of minutes and then we'll go in camera for some business.

Thank you very much.

[*Proceedings continue in camera*]

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