

Goodmans^{LLP} Update

Canada's First Patent Collective Launches for the Cleantech Sector

Over the last several years, the federal government has touted its \$85 million Intellectual Property Strategy (**IP Strategy**). One of the key pillars of the IP Strategy is \$30 million in funding for cleantech IP, via a “patent collective” called the Innovation Asset Collective (**IAC**). Over 16 months after that funding was awarded, the IAC has officially launched. Some or all of the IAC's services are likely to be beneficial to cleantech companies, and will complement those offered by IP advisors and lawyers.

Background

On April 26, 2018, the federal government unveiled what it billed as Canada's first comprehensive IP Strategy, designed to help Canadians understand, protect and access intellectual property (for more information, see our previous Goodmans Updates [here](#) and [here](#)).

The IP Strategy called for the establishment of a “Patent Collective” pilot project to assist small- and medium-sized enterprises (**SMEs**) with their patent and other IP needs. Patent collectives have been implemented to varying degrees in other jurisdictions, including Japan, South Korea and France. A patent collective is generally intended to provide business, legal and technical support relating to patents, and to obtain patent rights and license them to members. The potential benefits of patent collectives include: (a) reducing the cost of access to patents; (b) promoting the commercialization and monetization of patents; (c) promoting patenting domestically, rather than assignment abroad; and (d) encouraging facilitation and cooperation within industry.

In the IP Strategy, the government announced funding of \$30M CAD over four years to support the Patent Collective pilot project, and an RFP process to select a non-profit third party to structure and administer the program. On August 1, 2019, the government announced that the culmination of the RFP process with the selection of the IAC as the Patent Collective project administrator (for more information, see our previous Goodmans Update [here](#)). The IAC is an independent, membership-based, not-for-profit patent collective focussed exclusively on SMEs in the “data-driven cleantech” sector.

The IAC's Launch

On December 9, 2020, over 16 months after being awarded the Patent Collective RFP, the IAC officially launched. It unveiled its new website at <http://www.ipcollective.ca>, and hosted a one-hour webinar that included an appearance by the Honourable Navdeep Bains, the federal Minister of Innovation, Science and Industry.

According to its website, the IAC will offer its members services in the following four categories:

1. *Education, Advisory, and Best Practices.* The IAC will offer an educational IP curriculum as well as “bespoke advisory services”.
2. *IP Patent Generation.* It is unclear what the IAC means by “IP Patent Generation”, since patents are IP. Regardless, the IAC's services in this regard will include finding, funding or subsidizing patent filings for members.

Authors



Harry Radomski
hradomski@goodmans.ca
416.597.4142



Daniel Cappe
dcappe@goodmans.ca
416.849.6901

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3. *Freedom to Operate.* Under this service category, the IAC will acquire or provide “access” to patents for member use, thus giving its members freedom to operate without fear of infringement of those particular patents.
4. *Prior Art Library, IP Intelligence.* The IAC will provide access to a “prior art library” for “defensive use” and for the purpose of members’ patent filings. The IAC will also provide “litigation strategy assistance” in conjunction with members’ external litigation counsel, though it will not sue others. The IAC will also provide members access to “IP intelligence” and market data to develop their own individual business and IP strategies.

The IAC emphasizes its services are intended to supplement, not replace, those of its members’ IP advisors and lawyers.

As set out above, some or all of the IAC’s services are likely to be beneficial to cleantech companies, and will complement those offered by IP advisors and lawyers. The Canadian cleantech sector, though generally R&D-driven, does not appear to have fully taken advantage of its IP rights. According to the IAC, Canadian cleantech companies own less than 0.7% of global patents in the sector.

As the IAC is in its infancy, the scope and implementation of the foregoing services to be offered by the IAC remain somewhat unclear. For example, with respect to service 3 above, *Freedom to Operate*, it is unclear how the IAC intends to enforce its patent portfolio, and limit the “freedom to operate” to its members, given its repeated emphasis that it will not sue others.

Further, it is unclear how the IAC will determine which patents to acquire or license, from whom, and for how much. The IAC indicated that the scope of its patent portfolio will, in large part, be driven by its membership’s needs. However, membership eligibility for the IAC remains somewhat vague. At present, there is no precise indication of how big is too big to qualify as an SME, or what sort of business qualifies as “data-driven cleantech”.

To illustrate, there were two industry participants in the aforementioned launch webinar: Ecopia AI and Borealis Wind. Presumably both are eligible to be (and will be) IAC members. Ecopia AI uses artificial intelligence to convert high-resolution images of the earth into HD Vector Maps, while Borealis Wind develops and manufactures blade heating retrofits for wind turbines to remove ice buildup. It is difficult to envision a common patent (or patents) the IAC could acquire that both of these companies would regularly need to have freedom to operate.

Finally, the membership cost is also a work in progress. The IAC’s website states that the IAC “will work with you to find the right membership, one that provides high value at an affordable annual cost”. While costing information is not available on the IAC’s website, during the launch webinar, there were indications the annual fee will be \$15,000. The IAC also indicated it is investigating a lower cost model as well, and that government subsidies may be available.

We will be closely monitoring the IAC’s progress as it works to iron out the foregoing details and deliver value in IP for the Canadian cleantech sector.

For further information concerning this development, please contact any member of our [Intellectual Property Group](#).

All Updates are available at www.goodmans.ca. This Update is intended as a general summary for educational purposes only and should not be relied upon as legal advice with respect to any particular set of circumstances. If you require advice as to your circumstances, please contact any member of our Intellectual Property Group.

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