Greening up Canadian patent rights by expediting green technologies

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On March 29, 2022, the Federal Government delivered its 2030 Emissions Reduction Plan (the Plan). It is clear that the Plan strives to be comprehensive and ever greening. It sets the stage by establishing where we are in terms of current emissions and emissions management for key sectors, such as Oil & Gas, Transportation and Agriculture; and casts light on where we hope to go, outlining funding opportunities and actionable steps for each key sector and for nature-based and clean tech-based solutions overall. Notably absent from the Plan, however, is discussion on the protection and management of the new intellectual property (IP) underlying the development of these emissions management and green(er) technologies.

The Plan highlights funding programs that have been, or are being implemented to foster the innovation necessary to manage current and future emission levels – for example, see the Agricultural Clean Technology Program, the Sustainable Development Technology Canada programs, or the Industrial Research Assistance Program. However, a main focus of these programs is funding the R&D and operational costs for companies developing new, greener technologies – not their IP, which can take the (often costly) form of patent applications, trade secrets, trademarks, and more.

That said, there is a silver lining – if one knows where and how to look.

For any companies seeking to develop, protect, and market new technologies, balancing R&D costs with IP costs can be precarious at best. The Plan's funding programs can take the edge off that balancing act by covering most, if not all of a company's R&D costs. This can leave room in a company's budget for covering their IP costs, which can include the costs of engaging patent or trademark agents, drafting and prosecuting patent applications, maintaining granted patents, registering trademarks, and protecting trade secrets. By investing these funds into developing and protecting their IP, a company can better secure and defend their technology's place in the market from their competitors, and can better boost their branding power with their customers.

Further, Canada's Patent Office (CIPO) is particularly poised to support and advance the intellectual property surrounding green(er) technologies. Once a patent application has been published, so long as it relates to green(er) technologies, it qualifies for expedited examination at CIPO at no extra cost. The patent applicant needs only to

submit a statement with an examination request stating that the patent application relates to a technology “the commercialization of which would help to resolve or mitigate environmental impacts or conserve the natural environment and natural resources.” CIPO assumes this statement to be true, and makes no determination as to its validity so long as the statement clearly accompanies the examination request.

Making use of this expedited examination can allow a company to more easily advance the prosecution of their green(er) technology patent applications, thereby acquiring granted patents more quickly. This may allow a company to fully leverage their pending patent applications or granted patents with investors and funding organizations for additional capital, where such investors or funding organizations are looking for some assurance that the green(er) technology is patentable and that enforceable patent rights can be acquired.

Key Takeaway

Navigating the costs and processes surrounding protecting intellectual property rights can be daunting and challenging. However, the increased funding available through the Plan could help mitigate some of these challenges and their associated costs. For more information, please reach out to the authors or any of the key contacts listed below.

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