Intellectual property highlights in the Federal Budget 2022

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Amongst the other areas highlighted in the Foreword of the 2022 Federal Budget (Budget 2022), IP is specifically identified: “We will help Canadians and Canadian companies develop new IP – and turn their new ideas into new businesses and new jobs.” Below is a high-level summary of some of the portions of Budget 2022 relating to IP.

Review of SR&ED tax incentives

The Scientific Research and Experimental Development (SR&ED) program, aimed at providing tax incentives to conduct R&D, has been in place for a number of years. However, its applicability is limited. The federal government (government) has indicated that it will undertake a review of the program to ensure that it is effective in encouraging R&D that benefits Canada, and to explore opportunities to modernize and simplify it.

The government is also exploring whether a “patent box” regime could help develop and retain IP from R&D conducted in Canada.

Research and development

The government commits to working with the provincial and territorial governments to renew the programs under the Canadian Agricultural Partnership, which supports agricultural innovation and competitiveness among other initiatives. This renewal will occur under the next agricultural policy framework, which begins in 2023.

Budget 2022 announces that the necessary legislative amendments to enable Canada’s participation in the Lunar Gateway will be introduced. This will include the construction of Canadarm3 and the ratification of the Canada-US Lunar Gateway Treaty.

The government stated it will explore new ways to better integrate university researchers and business partners and modernize the National Research Council

(NRC). Further information will be provided with respect to this initiative and the establishment of a new innovation and investment agency.

New budget proposals

The government has stated that Canada's last place ranking in the G7 on R&D spending by businesses has to change. Further, the government states that Canada lags behind other countries on the number of patents held by businesses. To address these concerns, the government has proposed a number of budget items aimed at building "a world-class intellectual property regime".

Up to $1 billion over six years is proposed for critical minerals projects and in particular those focusing on manufacturing, processing and recycling applications.

In addition to a recent funding announcement, Budget 2022 proposes $45 million over four years to strengthen Canada's semiconductor industry.

A new Innovation and Investment Agency will be established to work with Canadian businesses and industries. Budget 2022 proposes $1 billion over five years. However, final operating budget details will be determined after a consultation later this year.

An additional $750 million over six years is proposed to support the further growth and development of Canada's Global Innovation Clusters. This amount will be allocated between the five clusters (plant-based protein alternatives; ocean-based industries; advanced manufacturing; digital technologies; and artificial intelligence) on a competitive basis.

Innovation, Science and Economic Development Canada (ISED) will receive $47.8 million over five years and $20.1 million ongoing to launch a new national lab-to-market platform to help graduate students and researchers take their work to market.

The CanExport program run by Global Affairs will receive $35 million over 5 years to help Canadian businesses secure IP rights in foreign markets.

ISED will receive $2.4 million over five years and 0.6 million ongoing to expand the use of ExploreIP. ExploreIP is an IP marketplace – an online resource for businesses to explore opportunities with patent holders in the public sector.

ISED will receive $0.8 million over five years and $0.2 million ongoing to expand the IP Legal Clinics Program. This program encourages the establishment of IP legal clinics in Canadian law schools to help with free or low cost access to basic IP advisory services and to foster the development of future IP experts.

Federal granting councils will receive $38.3 million over four years and $12.7 million ongoing to add new, internationally recruited, Canada Excellence Research Chairs in science, technology, engineering and mathematics. In Budget 2022, this is said to support a further 12-25 new Chairs to reinforce Canada as a destination of choice for world-class researchers.

The government has stated that Black researchers are underrepresented in the awarding of Natural Sciences and Engineering Research Council (NSERC), Social Sciences and Humanities Research Council (SSHRC), and Canadian Institutes of Health Research (CIHR) grants. Budget 2022 proposes $40.9 million over five years and $9.7 million ongoing to these councils to support targeted scholarships and fellowships for promising Black student researchers.

The Canadian High Arctic Research Station will receive continuing support in the form of $14.5 million over five years, with $8.4 million in remaining amortization and $2.5 million ongoing for the completion and operation of the Station.

The government is also planning to provide $125 million over five years and $25 million ongoing to the Research Support Fund to "build capacity within postsecondary institutions to identify, assess, and mitigate potential risks to research security". A further $24.6 million over five years and $8.4 million ongoing is proposed to establish a Research Security Centre to enhance Canada's ability to protect its research and provide guidance directly to the research institutions.

Budget 2022 provides $329.4 million over six years with $0.6 million in amortization to triple the size of the Agricultural Clean Technology Program. A further $100 million over six years is proposed for the federal granting councils to support research in net-zero emission agriculture through technologies and crop varieties.

Budget 2022 proposes $17.7 million over five years and $5.5 million thereafter for the Communications Security Establishment to establish a unique research chair program to fund research on cutting-edge technologies relevant to CSE's activities, which include enhancing cyber-security.

In addition, budget has been allocated to a number of different public health research institutions for research in areas such as aging, dementia, and brain health and the long-term impacts of COVID-19 on health and health care systems.

Other legislative amendments proposed

Annex 3 to Budget 2022 is stated to include "a number of measures (other than tax-related measures) that would be implemented through legislation." This statement signals the government's plans to introduce these additional "measures" as part of an omnibus budget bill.

One of the additional measures is a proposal to amend the *Copyright Act*, to extend the general term of copyright protection from 50 to 70 years after the life of the author. This term extension is one of the terms of Article 20 of the Canada United States Mexico Agreement.

In addition, Annex 3 states that the *College of Patent Agents and Trademark Agents Act* will be amended to "better enable directors of the College to prioritize the public interest and to improve the efficiency of the College's operations." The College of Patent Agents and Trademark Agents was recently constituted and is the independent public interest regulator of patent and trademark agents in Canada. Agents should keep up-to-date on any changes.

Annex 3 also indicates a plan to modernize the *Competition Act*. Holders of IP should monitor these changes to determine whether there is any impact on their IP rights.

Key takeaways

Although we have highlighted some of the IP-specific and R&D portions above, there are a number of other areas of focus and investment in Budget 2022 that could drive innovation, leading to the development of new IP, businesses and jobs.

Budget 2022 makes a number of statements that suggest the government is seeking to strengthen Canada's competitiveness in IP and to attract talent and investment from around the world as a result. However, it remains to be seen whether the manner in which these promises are implemented leads to the realization of this apparent goal.

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