

Attn: Krista Pearce
Canadian Intellectual Property Office, Patent Branch
50 Victoria Street, Place du Portage I
Gatineau, QC K1A 0C9

Dear Krista Pearce:

Re: Proposed amendments to the Patent Rules and Trade-Marks Regulations: Patent and Trade-Marks Agents

We are a business and intellectual property (“IP”) law firm that focuses on providing cost effective legal services to early stage entrepreneurs and technology transfer organizations (“TTO”).

I am writing in regards to the proposed amendments described under “1. Eligibility to sit for the Agent Qualifying Examination”. In order to encourage innovation and entrepreneurship in Canada, I submit that the qualifying experience for the Patent Agent Examination should be left at 12 months. Furthermore, the qualifying experience for the Trade-mark Agent Examination should be reduced to 12 months, while introducing a requirement that all individuals seeking to be entered on the list of trade-mark agents pass the qualifying examination.

The proposed changes should encourage innovation and entrepreneurship in Canada, especially during these trying economic times, by increasing access and affordability of IP legal services for early stage entrepreneurs and TTO. Specifically, this would be consistent with the Federal Government’s policy of encouraging entrepreneurial inventors¹ through various initiatives, such as the Scientific Research and Experimental Development (“SR&ED”) Tax Incentive Program, and the National Research Council’s Industrial Research Assistance Program (“NRC IRAP”). Additionally, the Federal Government encourages the creation of innovative companies through collaboration with the Government of Ontario in initiatives like the MaRS Discovery District and Ontario Centres of Excellence.

While the quality of candidates is relevant, the more important issue is the quality of the existing patent agents and those that pass the Patent Agent Examination. It is a known fact that the current Patent Agent Examination is rigorous. The Canadian Intellectual Property Office’s (“CIPO”) statistics for the 2008 Patent Agent Examination show that first time pass rate is 4% and that the overall pass rate is 17%. These statistics show that of the 231

¹ *I.e.* persons who invest their own time and money.

persons qualified to sit the 2008 examination only 40 became qualified agents.² Restricting the number of patent agents serving all of Canada, makes it difficult and expensive for entrepreneurs to have access to their services. Therefore, CIPPO's intention to further decrease the number of eligible candidates is of questionable benefit to those entrepreneurs who require affordable access to the services of qualified patent agents.

Lastly, if a qualified candidate writes and passes one or more but not all four papers of the Patent Agent Examination before the amendments are applied, the proposed amendments would bar that candidate from qualifying to sit the next year's Patent Agent Examination until they acquire the requisite 24 months of experience. For example, this case would arise if a person qualifies to write the examination through working as a patent agent trainee for 12 months and then is laid off before being able to acquire the full 24 months of experience. I urge that the recommendations incorporate a transitional provision allowing those that have passed a prior paper to be considered as qualified candidates. The CIPPO statistics show that in 2008, 59% of the candidates took two or three years to pass the Patent Agent Examination.³

Thank you for allowing me the opportunity to make comments on these proposed amendments. I appreciate that CIPPO has a difficult job in striking a balance between its clients and fulfilling its policy objectives while improving the Intellectual Property Administrative framework for Canada.

Sincerely,

INNOVATE LLP



Felix Tang
Lawyer & Entrepreneur

² See text version of data for Graph 6, <<http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/wr01777.html>>.

³ *Supra*, see text version of data for Graph 7.