

# Canada needs an innovative intellectual property strategy

By James Hinton and Peter Cowan

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The recent federal budget signalled a dramatic shift in Canada's approach to innovation. By announcing a national intellectual property (IP) strategy, the government finally addressed the calls of innovation experts who understand the critical role of IP in a 21st-century economy. The government also signalled its concern for taxpayers who have shovelled billions of dollars of investments into innovation inputs, but received zero national growth in innovation outputs.

Although short on details, the two paragraphs calling for a national IP strategy are a critical step for tearing Canada away from the current cycle of reinvesting only in innovation inputs, such as publicly funded research and talent, while allowing the outputs to be raided by foreign firms, with Canadian companies then forced to licence back their own taxpayer-funded IP.

Canada has never before had a national IP strategy, so getting it right will set the stage for subsequent innovation strategies. Here are some factors that our policy makers must take into account:

## Canadian innovators have only a basic understanding about IP

Canadian entrepreneurs understand IP strategy as a defensive mechanism to protect their products. In reality, IP is the most critical tool for revenue growth and global expansion in a 21st-century economy. Cross-discipline awareness and education is needed so that our innovators know how to generate IP through technology standards, regulatory design, ecosystem-licensing strategies, litigation, trade agreements and so on. Companies should also have access to pro bono and low-cost services at all publicly funded institutions.



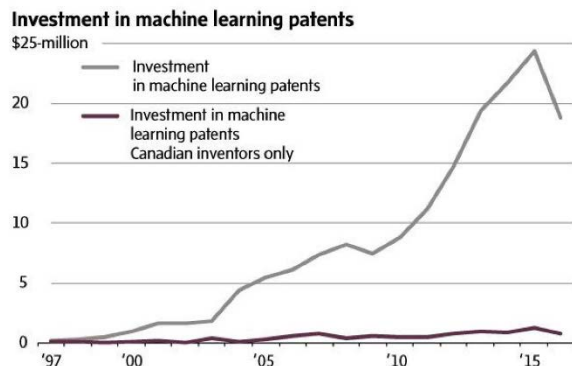
## Focus on global IP landscape, rather than tweak domestic IP rules

Canadian innovators compete in global marketplaces where the large commercialization opportunities lie, so Canadian patents are an afterthought, even for Canadian innovators. Canada's IP regime, including the Canadian Intellectual Property Office, needs a strategy that reflects global norms for IP protection, protects Canadian consumers and shrewdly supports Canadian innovators.

## Canadian businesses own a dismal amount of IP

Although IP has emerged as the most valuable corporate asset over the past two decades, it is overlooked by Canadian policy makers and businesses. As our governments continue to

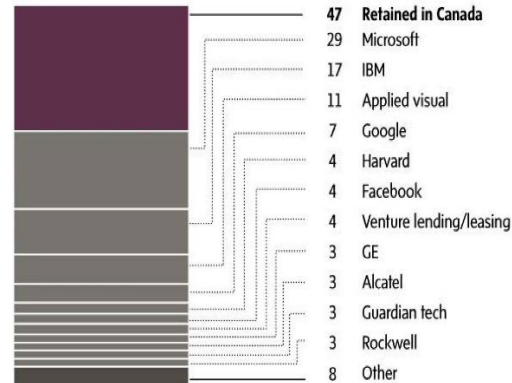
invest in high-potential or general-purpose technologies such as artificial intelligence (AI), quantum, clean tech and blockchain, we need to invest in strategic patent generation to capitalize on this investment. But patent generation is not a simple game of volume. Canadian industry needs business-relevant patent assistance to help our researchers and high-growth firms generate and retain quality IP that will help expand their businesses.



### Building quality patent portfolio requires technically savvy experts

A high-quality patent portfolio needs to include issued and in-force patents, including patents outside of Canada in key markets such as the United States and Europe. Strong portfolios will also have broad sets of claims that are practised by industry, spread across many patents creating a cloud of rights with pending applications. Canadian entrepreneurs are not taught how to build a quality patent portfolio with all of these attendant elements. There needs to be foresight to understand where the industry is evolving to ensure patents have market relevance.

**Who owns Canadian-generated patents now**  
Machine learning-related patents, by assignee



JOHN SOPINSKI/THE GLOBE AND MAIL, SOURCE: JIM HINTON / PETER COWAN;  
WIPO STATISTICS DATABASE AND WORLD BANK, OCTOBER 2016

### IP benefits from public-private partnerships are flowing out of country

To commercialize research, publicly funded institutions currently partner with industry players. Most agreements end up with newly developed IP wholly-owned by the industry partner because they have the vision to harness the value in the IP. These industry partners are almost always foreign multinationals, leading to critical leakage of IP out of Canada. This explains why Canadian universities have developed world-leading IP in highly valuable fields such as regenerative medicine, Ebola vaccines, machine learning and AI, but most of the IP is currently owned by foreign firms, moving the resultant wealth and associated economic benefits outside Canada.

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