



Open Letter to the Prime Minister of Canada Mr. Justin Trudeau

We, the undersigned companies and organizations, write to urge you to promote a public policy environment in Canada that supports innovation and intellectual property (IP). Canada has a history of one of the most well developed environments for promoting advancement of the arts and business through the defense of intellectual property rights, but we are concerned about current developments. Canada has begun to lag behind other developed nations in protecting and enforcing intellectual property rights, even though scholarly research shows that more than ever the protection of such rights are key drivers for a country's economic growth.

Intellectual property is important to both the United States and Canada. The pharmaceutical industry in Canada supports approximately 34,000 high paying jobs. Similarly, the industry invests more than \$1 billion per year for research and development, which is approximately a third of the industry's overall economic impact in Canada. Protecting patents incentivize heavy investment in research and development for lifesaving pharmaceuticals, breakthrough consumer products, and green technologies. American IP-intensive industries constitute 74 percent of exports — or \$1 trillion. Moreover, in the U.S., IP-intensive industries contribute approximately \$5.8 trillion to output—or approximately 38 percent of total U.S. GDP. Workers in IP-heavy industries are, on average, paid 30 percent higher wages, at \$50,576 per worker, compared to the national average of \$38,768. As one of the United States' primary trading partners, both Canada and the United States benefit from our related IP industries.

Intellectual property is necessary for each of our countries to thrive. However, a key concern among (IP) rights advocates in Canada is the so-called "promise doctrine." Innovators are now required to "demonstrate" or "soundly

predict” the utility of an innovation as “promised” at the time of filing the patent application. This heightened requirement is known as the “promise doctrine”. The promise doctrine weakens the ability of innovators to defend and enforce patents by undermining the value of patent rights. Certain recent judicial decisions in Canada have applied the doctrine more narrowly, but the doctrine remains vague and unpredictable since Canadian courts are free to follow prior decisions that have taken a much more capricious and variable approach in applying the doctrine.

This added level of unpredictable judicial regulation has left innovators uncertain; it is not clear what exactly is needed to enable them to properly defend their intellectual property. This type of uncertainty undermines a company’s ability to reliably defend and enforce its existing patents, as well as limiting its ability to obtain new patents from the Canadian Intellectual Property Office.

The promise doctrine is also at odds with international practice and with Canada’s respective NAFTA and WTO obligations. Canada’s promise doctrine undermines international IP norms, and sets an inappropriate and unpredictable precedent for developed and developing economies seeking to establish stable IP regimes that promote local innovation.

The promise doctrine will also have a negative impact on innovation and access to medicines. For innovators to invest crucial resources required over many years of research and development, companies need certainty and the ability to enforce and defend patents. Canada’s promise doctrine undermines patent protection and removes a critical incentive that drives and sustains biopharmaceutical innovation on both sides of the border.

Canadian patients are already feeling the pain. In the years between 2005 and 2014, the number of clinical trials conducted in Canada has decreased by 21 percent. Moreover, Canadian patients are not receiving improved existing treatments, including new formulations and delivery methods that can make medicines easier to use.

We hope that your new leadership as Prime Minister of Canada will contribute and further improve pro-IP policies in your country and around the globe. We look forward to continued friendly trade relations with Canada and its leading free-market economy.

List of Signatories

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