

## What the End of NAFTA Could Mean for Patent Filing Trends in Canada

April 3, 2018 by Nazli Jelveh

According to the IP Canada Report 2016, the USA is the top patent filer in Canada, with 17,966 applications in 2015, immediately followed by Canada, with 4,277 applications.[1] In 2015, the number of patent applications filed in Canada, by USA residents grew by 10%, while this number grew by only 2% for Canadian residents.[2] From all the patent applications submitted to CIPO, in 2015, only 12% were made by Canadian residents, which is considerably lower than the global average for resident application share, which is 67%. [3]

CIPO has recognized Canada's "very close economic links to a large neighbor, the United States"[4] and "Canada's close integration into the global economy"[5], as the two reasons why Canada's resident application share is lower than most other leading economies. If CIPO is correct, then the current NAFTA negotiations could have a great impact on the patent filing trends in Canada.

### *NAFTA's Impact on Canada's Economy*

Since NAFTA came into effect in 1994, the economy of North America has more than doubled in size and Canada-US trade has nearly tripled.[6] Canada is the number one trade partner for more than half of the states in the USA and the second trade partner for the majority of the remaining states.[7]

Therefore, if NAFTA dies, it is very likely that many close economic links between US and Canada will break down. Dissolution of such economic links between the two countries may result in loss of incentives for potential American patent filers to file for patents in Canada. Since the US is the top patent filer in Canada this loss is very concerning. A drop in the number of patents filed by US residents will, considerably, decrease the total number of patent filings in Canada.

### *Canada as a Gateway to the US Market*

Additionally, as a result of NAFTA, Canada is also perceived as a gateway to the US market. A report, prepared by the Government of Canada, which is targeted towards foreign investors, states that "In North America, Canada enjoys direct access to the NAFTA market, so foreign investors can reach a single market of 480 million consumers, with a combined GDP of over US\$20 trillion. Many Canadian production hubs are located closer to US markets than are American production sites." [8]

If the links that NAFTA has created between the Canadian and American markets are eliminated, there is a chance that other foreign countries such as Germany, Japan, France and Switzerland, that are among the top patent filers in Canada, will have little to no incentive to file for patents in Canada.

### *Is NAFTA Canada's Achilles' Heel?*

Killing NAFTA will cut many of the economic channels between Canada and the USA and this may cause hesitancy in foreign patent filers to file for patents in Canada. Since foreign patent filings account for more than 68% of the total patent filings in Canada [9], such a drop could have dramatic impacts on the total number of patent filings in Canada.

Assuming that the number of patent filings correlates directly with the rate of innovation in a country [10], then a decrease in the former may result in a decrease in the latter. It has been shown that the rate of innovation affects the growth rate of output in manufacturing.[11] The number of patent filings and the GDP from manufacturing in Canada has seen a net increase since 1995, around the time NAFTA came into effect.[12] Therefore, a drop in the number of patent filings could affect the country's manufacturing industry and the GDP from manufacturing.

Although it has been said that if NAFTA dies, it won't be the "end of the world" for Canada [13], Canada needs to start thinking about other ways to balance the effects of a possible dissolution or modification of NAFTA. In order to do so, among other things, Canada needs to find ways to attract foreign investors and patent filers and encourage innovation from within.

Being overly-dependent on foreign markets and economies is a risky business, specially in the current unstable political atmosphere.

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[1] Canadian Intellectual Property Office, "IP Canada Report 2016" (25 November 2016), Government of Canada (website), online: <[https://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h\\_wr04112.html](https://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr04112.html)>.

[2] Ibid.

[3] Ibid.

[4] Ibid.

[5] Ibid.

[6] NAFTA NOW (website), online: <[http://www.naftanow.org/results/default\\_en.asp](http://www.naftanow.org/results/default_en.asp)>.

[7] Judi Bottoni, "NAFTA, Trump and Canada: A guide to the trade file and what it could mean for you" (24 January 2017), The Globe and Mail.

[8] The Canadian Trade Commissioner Service, "Invest in Canada Flagship Report" (2016), Government of Canada (website), online: <[http://www.international.gc.ca/investors-investisseurs/assets/pdfs/download/1-Flagship\\_report.pdf](http://www.international.gc.ca/investors-investisseurs/assets/pdfs/download/1-Flagship_report.pdf)> at 24.

[9] Supra note 1.

[10] for more on this, please visit <http://www.wipo.int/patent-law/en/developments/research.html>.

[11] Hulya Ulku, "R&D, Innovation, and Growth: Evidence from Four Manufacturing Sectors in OECD Countries" (2005) Institute for Development Policy and Management at University of Manchester Working Paper No. 12, online: <<http://ageconsearch.umn.edu/bitstream/30542/1/de050012.pdf>>.

[12] Supra note 1, figure 4.

[13] Alexander Panetta, "Canada's original NAFTA negotiator say it's not 'end of world' if deal dies" (18 October 2017), CTV NEWS (website), online: <<http://www.ctvnews.ca/politics/canada-s-original-nafta-negotiator-say-it-s-not-end-of-world-if-deal-dies-1.3638387>> and please see Jesse Ferreras, "What if NAFTA ended? These would be Canada's hardest-hit provinces, industries" (18 October 2017), Global News (website), online.

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