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Protecting Innovative Technology: Global Patent Strategies: The Big Picture - The Enforcement of United States and Canadian Intellectual Property Rights in North America and Globally

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PROTECTING INNOVATIVE TECHNOLOGY: GLOBAL PATENT STRATEGIES: THE BIG PICTURE – THE ENFORCEMENT OF UNITED STATES AND CANADIAN INTELLECTUAL PROPERTY RIGHTS IN NORTH AMERICA AND GLOBALLY

Session Chair – Graham E. Taylor
Canadian Speaker – A. Kelly Gill
United States Speaker – Michael C. Elmer

INTRODUCTION

Graham E. Taylor

I am general counsel for the Dow Chemical Company in Midland, Michigan. I am here to introduce this afternoon's session on Protecting Innovative Technology, Global Patent Strategies, and the Big Picture. We are talking about the enforcement of United States and Canadian intellectual property rights in North America and globally. The speakers in the sessions that have gone before have really made the case for the importance of innovation, and they have noted repeatedly that this is a global phenomenon not limited to the United States and Canada. An important part of innovation is ultimately the protection and enforcement of inventor's rights. Apparently, the concept of patents goes back to Venetian times, but there is no doubt in my mind that the single most important step of the advancement and development of IP law was the imbedding of patent law in the United States Constitution. IP law is very much a part of the fabric of America and its founding principals.

I suspect that many of you attending this conference this afternoon are not acquainted with the arcane area of intellectual property law. It is a complicated area of law. I also suspect the deans of law schools don't really understand that while the history and "poly-sci" grads here are engrossed in torts and corporate law, there are actually scientists and engineers in these classrooms. They are thinking securities regulations and income tax are not complicated enough, and they go on to practice in intellectual property. So, we will try to have two people here today who are going to guide us through some of the issues that corporations and the inventors have in really trying to protect the value of innovation and what that entails.

I think the other thing that is important here is that Dr. King had foresight in adding to the scope of the discussion the word "global" because on these issues, it is not really enough to think of North America as the manufacturing base for many products. Indeed, as we have heard, the base for delivering

many services has shifted to China, India, and other places. Both policy makers and the practitioners amongst us have to look at this issue through a wide angle lens.

Today we have two respected practitioners of IP law. On my immediate left is Kelly Gill, who is the department head of intellectual property group in Toronto, and he is the national leader of Gowling and Henderson, and it is Gowling, Lafleur and Henderson now, of their IP litigation national practice group. Kelly was selected as one of the top 40 under 40 Canadian lawyers about two years ago, and he has appeared in many, many cases in the country and including acting for the Law Society of Upper Canada in a landmark copyright infringement case. Our second speaker will be Michael Elmer, partner of the U.S. IP law firm of Finnegan, Henderson, Farabow, Garrett, and Dunner, and he is based in Palo Alto. And he has spent over 30 years in the IP law field.

One of the things he has done is develop a global litigation base from which he is going to share some views on where and how IEP litigants might go about enforcing their rights. So we have two guides through the IP thicket, and they are going to talk about the big picture on how practitioners go about choosing the jurisdiction and which to enforce IEP law. So with that, Kelly?

CANADIAN SPEAKER

*A. Kelly Gill**

I am going to cover three basic areas today. I would like to start off by giving you a general idea of the Canadian patent landscape, to give you some idea about who files patents in Canada, where these patent filers come from geographically in the world, how much litigation goes on, and what type of win rates are happening in Canada with respect to patent litigation. Then, briefly, I am going to look at multi-jurisdictional litigation. Really, what I want to do is just touch on it because Mike is going to give a much more in depth look at worldwide patent litigation. But, I would like to just reinforce the notion that patents, as with other intellectual property, are still territorial

* A. Kelly Gill is Department Head of Gowling Lafleur Henderson LLP Intellectual Property Group in Toronto and specializes in trademark, copyright, patent and misleading advertising litigation, including related rights and opinion work. Mr. Gill was selected as one of Canada's top lawyers under the age of forty in December 2004. Mr. Gill's practice has brought him before the Supreme Court of Canada, the Federal Court of Appeal, the Federal Court Trial Division, the Ontario Court of Appeal, High Court and Divisional Court. Mr. Gill is an author of *The Canadian Law of Trade-Marks and Unfair Competition*. Mr. Gill has sat on the editorial boards of the *Canadian Intellectual Property Review* and *Patent World* (London).