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In response to IP Australia's consultation paper: ACIP's Recommendation on the Innovation Patent System (August 2015), I provide the following:

(1) My view on the ACIP recommendation that the government should consider abolishing the innovation patent system:

Yes! The Government should abolish the innovation patent system. The policy objective of the innovation patent to stimulate innovation in Australian SMEs has not been achieved.

The IP Australia commissioned Economic Study (Johnson et al. 2015. The economic impact of innovation patents. IP Australia Economic Research Paper 05) has provided much needed quantitative and qualitative exploration in a policy area previously dominated by unsupported speculation. While the Economic Study appears to be of good quality, complete confidence in its use in evidence-based policy decisions on the abolition of the innovation patent system, is unfortunately impaired by its lack of independence. Having said this, the Economic Study certainly assisted me to form my present view.

I do not support any alternative attempts to instead reform the innovation patent system, which are unlikely to address key problematic aspects of the innovation patent. I consider the fundamental attributes of innovation patents such as the low-innovative threshold, low application cost, ambiguous scope/enforceability which is combined with exploitation confined to the small marketplace of Australia, to be harmful to SME's. These attributes encourage early and therefore premature publication of the innovation before the innovation is fully formed and sufficient resources are concentrated for the next steps in commercialisation. Global competitors are able to use the published innovation patent in the development of products in the global market (excluding Australia) and take advantage of low-cost manufacturing, all without any reward or enforceability being available to the Australian SME patentee of the innovation patent. The Economic Study provides indirect evidence for the harm to SMEs –beyond the regulatory costs, in that SME's appear to be actively dis-incentivised from re-using the innovation patent system after their first experience. How can SME's survive and grow if they are unable to attract venture capital investment because they have not sought/obtained effective IP rights in anticipated market and manufacturing jurisdictions? Conversely, a right with a higher barrier to entry (standard patent) requires a more complete understanding of the invention and a concentration of resources, which in turn enables the SME to attract investment and succeed beyond the early stages of innovation.

(2) Potential alternatives to encouraging innovation amongst small to medium enterprises (SMEs):

My experience gained over 17 years working in University, Private and Government scientific research organisations is that the Cooperative Research Centres program is the single most effective means of transforming research into commercial outcomes. Other effective systems include the Research & Development Tax Incentive and the Commercial Ready Grant Scheme (defunct). The Accelerating Commercialisation grants sub-program (under the Entrepreneurs' Programme) is also effective in the stimulation and conversion of innovation to commercialisation as it incorporates much needed mentoring and advice to SME's.

I consider that the Government should focus its SME innovation stimulation resources more directly by using programs like the aforementioned, rather than attempting to stimulate innovation through regulatory mechanisms such as the marginally beneficial innovation patent system.

Regards,

A handwritten signature in blue ink that reads "A.T. Mitchell". The signature is written in a cursive style and is placed on a light blue rectangular background.

Dr Aaron Mitchell
28 September 2015