

PO Box 161
BROWN HILL
VIC 3350

September 28, 2015

Mr David Simmons
Contact Officer
IP Australia

Dear Mr Simmons,

Re: ACIP's Recommendation on the Innovation Patent System

With respect to the software industry, both innovation patents and standard patents are unnecessary, ineffective and indeed harmful to innovation.

Given that ACIP's analysis indicates the innovation patent system to be widely ineffective, expensive and disproportionate in value, we support the recommendation to abolish the system.

Eliminating innovation patents is a small step in the right direction for the software industry. The real goal we seek is to be able to go about our work without constant fear of (standard) patent aggression.

Contrary to media reports, neither patent "trolls" nor low quality patents are our main concern. Our real problem comes from the anti-competitive advantage the system grants to large companies. These companies can afford to build extensive high-quality patent portfolios and bury SMEs in litigation. This walls-off entire fields of research, such as video encoding, as too dangerous to touch.

From our perspective, "fixing" the standard patent system is not possible — the system is entirely inappropriate for the software industry. Only an approach that shields or excludes us can be effective.

The solution we recommend for the standard patent system is to legislate that developing, distributing, or running a program on generally used computing hardware does not constitute patent infringement. This approach has some advantages over exclusions to patentable subject matter: it avoids classifying patent applications as "software" or "not software" (a problem faced by New Zealand) and it prevents rewording of applications so as to slip around the exclusions. As a secondary preference, we would also support the alternative approach of excluding computational ideas from patentable subject matter.

Sincerely,



Ben Sturmfels
on behalf of:

Dr. Ann Borda

Executive Director of VeRSI - Victorian eResearch Strategic Initiative and Chief Executive Officer VPAC — Victorian Partnership for Advanced Computing (Parkville, VIC)

Jonathan Chang

Director of Silverpond Pty Ltd (Melbourne, VIC)

Roger Clarke

Director of Xamax Consultancy Pty Ltd and Visiting Professor at ANU and UNSW (Chapman, ACT)

Alex Fraser

Independent game developer (Glen Huntly, VIC)

Michael Hideo-Smith

Software Engineering Manager and writer for Red Hat Asia-Pacific (Brisbane, QLD)

Dr Les Kitchen

Honorary Senior Fellow in the Department of Computing and Information Systems, University of Melbourne (Carlton, VIC)

Rusty Russell

Free Software programmer and advocate, known for his work on the Linux kernel (Adelaide, SA)

Ben Sturmfels

Software developer and small business owner (Brown Hill, VIC)

Dr Andrew Tridgell

Computer scientist known for his work on the Samba file server and visiting fellow at ANU (Griffith, ACT)