



28th September 2015

David Simmons
IP Australia
PO Box 200
Woden ACT 2606

Dear Mr. Simmons:

Re: BSA | The Software Alliance's Comments on ACIP's Recommendation on the Innovation Patent System

BSA | The Software Alliance's (BSA)¹ appreciates the opportunity to submit comments on the Australian Council for Intellectual Property's (ACIP) recommendation to abolish the Innovation Patent System in Australia. BSA is the world's leading advocate for the software industry. Our members are some of the most innovative companies in the world. Patents are a key way that BSA members protect their groundbreaking innovations. Ensuring governments around the world adopt patent policies that promote innovation is therefore a critical part of BSA's mission.

With regard to the current proposal to eliminate Australia's Innovation Patent System, some BSA members are very concerned. It is the position of some BSA members that the Innovation Patent System has proven to be a useful and efficient tool in encouraging innovation both by recognizing the contributions of companies and individuals to the state of the art and by encouraging competitors to develop different solutions to common problems rather than copying the contributions of others. Promoting innovation not only encourages our members to continue to invest in innovation for products that are developed, manufactured, and sold in Australia, but also encourages innovators both small and large to meaningfully differentiate the features available in their products, which, in turn, improves the choices available to Australian consumers.

Rather than abandoning the system, some BSA members believe that this shared goal is best achieved by improving the Innovation Patent System as well as promoting it to Small and Medium Sized Enterprises (SMEs). In addition, we suggest making improvements to Australia's Standard Patent System. Our members oftentimes tend to use the Innovation Patent System in circumstances where they do not believe the Standard Patent System will give them the tools they need to fully protect and enforce their intellectual property rights.

Improving the Innovation Patent System

As mentioned at the outset, rather than abandoning the system, BSA suggests that the Australian government focus on ways to improve the Innovation Patent System for Small and Medium Sized Enterprises (SMEs). We propose the following recommendations based on ACIP's Final Report in 2014 or Options Report in 2013 to improve the innovation patent system: (1) Recommendation 5 in ACIP's Final Report: excluding methods and processes from the list of patentable subject matters for innovation patent system; (2) Recommendation 2 in

¹ BSA | The Software Alliance (www.bsa.org) is the leading advocate for the global software industry before governments and in the international marketplace. Its members are among the world's most innovative companies, creating software solutions that spark the economy and improve modern life. With headquarters in Washington, DC, and operations in more than 60 countries around the world, BSA pioneers compliance programs that promote legal software use and advocates for public policies that foster technology innovation and drive growth in the digital economy.

BSA's members include: Adobe, Altium, ANSYS, Apple, ARM, Autodesk, AVEVA, Bentley Systems, CA Technologies, Cisco, CNC/Mastercam, DataStax, Dell, Intel, Intuit, Minitab, Oracle, PTC, salesforce.com, Siemens PLM Software, Symantec, Tekla, The MathWorks, and Trend Micro.

ACIP's Final Report: raise the level of inventiveness of innovation patents. We further suggest raising the level of inventive-step of innovation patents to the same level as standard patents; (3) Recommendation in ACIP's Options Paper to remove the possibility of seeking injunctive relief from those innovation patents that are not being commercially exploited and the term of injunctive relief could be reduced by an amount equal to the delay in seeking certification.

Promoting the Innovation Patent System to SMEs

The fact that SMEs may not be taking full advantage of the system does not necessarily mean that the system itself is flawed. On the other hand, it is very possible that SMEs are not fully aware of the advantages or the simple procedures for taking advantage of the Innovation Patent System. Furthermore, it is unsurprising that SMEs participate in the Innovation Patent System at a lower rate than larger enterprises. This is true with regard to all patent systems. SMEs oftentimes lack the resources necessary to take full advantage of patent systems. SMEs also tend to be less aware of the importance of patenting their innovations. While the Australian government has done a very good job of keeping the cost of applying for an Innovation Patent very low, we believe the government could enhance its education and outreach to SMEs to promote the advantages of using the system. We would suggest this as an alternative approach to abolishing the system that preserves and enhances the benefits provided by the Australian Innovation Patent System to both innovators and consumers.

Improving the Standard Patent System

While BSA does not believe there is a need to abolish the Innovation Patent System, we also believe that the need for the Innovation Patent System would be minimized if the Australian government were able to improve the functioning of its Standard Patent System. For example, the backlog in prosecuting patent applications under the Standard System may cause stakeholders to rely more on the Innovation System. At the same time, the compressed time period during which an application must complete the application process also makes the Standard Patent System less attractive. This, in return, makes the Innovation Patent System more desirable.

Conclusion

BSA is grateful for the opportunity to provide comments on this important issue. The Innovation Patent System can be a useful tool for innovators of all sizes but needs further improvement in many aspects as above mentioned. We are hopeful that the Government will look for ways to improve the system rather than abolishing it. We look forward to working with you to continue to improve the patent system and foster innovation in Australia.

Very truly yours,



Jared Ragland
Director, Policy – APAC
BSA | The Software Alliance