



CHC Submission to the Advisory Council on Intellectual Property
Review of the Innovation Patent System

To:
Project Officer
Advisory Council on Intellectual Property
PO Box 200,
Woden ACT 2606
mail.acip@ipaaustralia.gov.au

From:
Emma Burchell
Head, Regulatory Affairs
Complementary Healthcare Council of Australia
PO Box 450
MAWSON ACT 2607

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Introduction

The Complementary Healthcare Council of Australia (CHC) welcomes the opportunity to provide comment to the Advisory Council on Intellectual Property on its Review of the Innovation Patent System Options Paper, dated August 2013.

The CHC is the peak industry body representing companies involved in all facets of the complementary medicine products industry from research organisations, sponsors, manufacturers, importers, exporters, raw material suppliers, wholesalers, distributors and retailers. The CHC is committed to a high growth and sustainable complementary medicines industry. We promote industry advancement, whilst ensuring consumers have access to complementary medicines of the highest quality, contributing to improved population health outcomes.

Complementary medicines and natural healthcare products include vitamins, mineral and nutritional supplements, special purpose foods, herbal and homoeopathic medicines, aromatherapy products, and natural cosmetics using herbals and botanicals. Complementary medicines comprise traditional medicines, including traditional Chinese medicines, ayurvedic, and Australian Indigenous medicines. Complementary medicines are generally available for self-selection by consumers and can be obtained from retail outlets such as pharmacies, supermarkets and health food stores. The majority of complementary medicines are indicated for the relief of symptoms of minor, self-limiting conditions, maintaining health and wellbeing, or the promotion or enhancement of health.¹

There are over 300 complementary medicine companies in Australia generating around \$2 billion in annual revenues. Australian companies export around \$200 million in complementary medicines to more than 20 countries in Southeast Asia, Europe and The America's, and this continues to grow at a higher rate than domestic consumption.² In Australia the industry generates around 5,000 highly-skilled manufacturing jobs, and indirectly supports a further 60,000 jobs. The global market has been estimated at \$US 83 billion annually.³

However, an appropriate regulatory environment is required for a viable and competitive complementary medicines industry. The current environment of escalating regulatory red tape contributes significantly to the difficulties faced by industry, particularly on small to medium-sized enterprises (SMEs). Excessive regulatory red tape stifles job creation, reduces investment, lowers innovation and lessens productivity. There is a lack of data protection, where standard patents are not applicable to natural ingredients or the evidence generated is not protected by IP laws. That is why the CHC actively seeks and supports opportunities for greater industry incentive to invest in R&D and for options for exclusivity for industry innovation.

¹ Source: TGA, <http://www.tga.gov.au/industry/cm-basics-regulation-overview.htm>

² CHC Complementary Medicines Industry Audit May 2011

³ The Australian National Audit Office, Performance Audit Report No. 3 2011-2012, Therapeutic Goods Regulation: Complementary Medicines, pp13

Specific Comments

The CHC supports the maintenance of the innovation patent system to assist Australian businesses with intellectual property rights (IPRs) for their lower level inventions. Innovation patents are intended to reduce the compliance burden on users of the patent system by providing easier, cheaper and more efficient rights for innovations from that of the standard patent. The CHC believes that further consideration of raising the inventiveness threshold for innovation patents to the same level as that for a standard patent would be to remove the main objective of the system, to stimulate innovation and R&D in Australian SMEs.

The Advisory Council outlines that since the 2004 innovation patent review the courts have interpreted some of the legislation provisions unique to the innovation patent system and that it may be appropriate for another review of the system to assess whether its objectives remain appropriate. The CHC suggests that considerations for a review of the patent system should include the bedding down of recent changes to the legislation introduced by the *Intellectual Property Laws Amendment (Raising the Bar) Act 2012*. It would seem appropriate to watch and wait for these changes to bed down before conducting another wide ranging review, especially as many of the concerns with the potential abuse of the innovation patent system or lack of certainty of enforceable rights seem to have been considered when these legislation changes were made.

It is encouraging to see that The Raising the Bar Act includes a number of initiatives to strengthen standards for the granting of patents to provide greater certainty to Australian users of the system. It is suggested that other concerns over potential abuse of the innovation patent system should be dealt with from an administrative review or further refinement of the system, rather than used as supporting evidence for complete removal of such a system or for an increase of the inventiveness threshold.

The CHC would be interested in participating in any forthcoming round table discussions on issue rising out of the options paper. We welcome further effort to quantify the extent to which the innovation patent is stimulating innovation and R&D of Australian SMEs.

In summary, the Complementary Healthcare Council strongly supports option A to the consultation paper - that there be no change to the Innovation patent system. We agree that it would be reasonable to see how the changes from The Raising the Bar Act are bedded down before making any more changes to the system.

If you have any questions about statements in this submission, please do not hesitate to contact me on 02 6260 4022.

Yours sincerely,

Emma Burchell