



Representing *the best* of the plant science industry

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25 September 2015

Mr David Simmons
IP Australia
PO Box 200
WODEN ACT 2606

By email: consultation@ipaaustralia.gov.au

Dear Mr Simmons

RE: CONSULTATION ON THE ADVISORY COUNCIL ON INTELLECTUAL PROPERTY'S (ACIP) RECOMMENDATION ON THE INNOVATION PATENT SYSTEM

CropLife Australia (CropLife) is the peak industry organisation representing the agricultural chemical and biotechnology (plant science) sector in Australia. CropLife represents the innovators, developers, manufacturers and formulators of chemical crop protection and agricultural biotechnology products.

Intellectual property is the fundamental source of protection for innovation in the plant science industry and CropLife welcomes the opportunity to comment on the current ACIP recommendation. CropLife considers that for Australia to remain at the forefront of agricultural innovation a globally competitive intellectual property system is crucial.

CropLife does not support the ACIP recommendation that the Innovation Patent System be abolished.

The Innovation Patent System plays a small but important role in providing organisations with what is effectively a 'second tier' intellectual property protection option. With some modifications, CropLife believes the Innovation Patent System can better meet the needs of those small to medium enterprises (SMEs) that benefit from a lower-innovation threshold patent system.

CropLife recommends that IP Australia consider changes to the Innovation Patent System in three key areas:

1. Raising the threshold for the 'innovative step' of an innovation patent;
2. Requiring examination prior to a grant (unexamined innovation patent applications should remain pending until an examination has been completed and the application excepted); and
3. Setting an examination deadline for innovation patents.

Whilst CropLife does believe the threshold for the 'innovative step' of innovation patents should be raised, we do not support raising it to the same level as that required of standard patents. Instead, further consideration and consultation by IP Australia is recommended in order to find the right balance between the two.

CropLife is concerned that innovation patents can be 'granted' but do not contain an enforceable right until they have been examined, as there is a danger that inexperienced users of the system may consider they have obtained something, which in reality they do not have. To address this concern any unexamined innovation patents should remain pending applications until examination has been completed and the application is considered to have met the legislated requirements for patentability.

Finally, to reduce uncertainty, CropLife recommends that all innovation patents should be examined within the three year deadline originally recommended by ACIP.

Strengthening and refining the Innovation Patent System, together with ongoing consultation with industry, should assist to improve Australia's intellectual property framework for all stakeholders, regardless of whether they are large multinational R&D companies or locally based SMEs.

Please do not hesitate to contact CropLife's Crop Biotechnology Policy Manager, Mr Osman Mewett, (osman.mewett@croplife.org.au; 02 6230 6399) should you have any questions or require further information in respect of these comments.

Yours sincerely



Matthew Cossey
Chief Executive Officer