



28 September 2015

Secretary
Advisory Council on Intellectual Property
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**Generic and Biosimilar
Medicines Association**

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Dear Secretary,

Re: GBMA supports the ACIP recommendation to abolish the innovation patent system

Members of the Generic and Biosimilar Medicines Association (previously the Generic Medicines Industry Association) are dedicated to making medicines affordable. In our response to the Advisory Council on Intellectual Property (ACIP) Review of the Innovation Patent System Options Paper in October 2013, we recommended abolishing the innovation patents system in totality, believing that the intent of the patent system to stimulate innovation in Australia should be achieved via the usual patent system.

GBMA notes the corrigendum to the ACIP Final Report dated May 2015. In this updated statement, ACIP notes the additional information that has become available to suggest innovative activity is not being stimulated among Australian small to medium enterprises (SMEs) by the innovation patent system. GBMA agrees with the key finding of the IP Australia Economic Research Paper 05 that private gains from innovation patents are likely to be offset by the uncertainty in costs to consumers and producers, resulting in a net cost to society.

As the threshold for granting innovation patents is low and an application is not subject to a stringent examination process, GBMA argues that innovation patents are easy to obtain. Considering the recent changes to increase the threshold for patentability, it follows that in future, easily obtainable innovation patents may be strategically used to create a barrier to market entry in Australia for generic medicines. Therefore, GBMA is of the opinion that abolishing the innovation patent system will level the playing field and not delay generic medicine market entry and the follow-on savings these medicines provide to the Pharmaceutical Benefits Scheme.

GBMA therefore supports the ACIP determination that the innovation patent system is not achieving its objective to stimulate innovation among SMEs. GBMA supports the ACIP recommendation to government to abolish the innovation patent system.

Finally, GBMA would also recommend that the government revisit the Pharmaceutical Patents Review (PPR) Final Report, May 2013. Although commissioned under a previous government, the PPR comprised an in-depth review of pharmaceutical patents in Australia. It proposes a number of recommendations that GBMA believe if implemented, would balance pharmaceutical intellectual property in Australia, encourage innovation and prevent strategic gaming of the system by patent holders to delay market access for generic and biosimilar medicines.

Yours faithfully,

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