



Australian Government
IP Australia

Consultation Paper: ACIP's Recommendation on the Innovation Patent System

August 2015

A blurred, purple-tinted photograph of a modern office interior with people walking and a glass wall.

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Introduction

In May 2015, the Advisory Council on Intellectual Property (ACIP) released a statement updating its position on the future of the innovation patent. ACIP recommends that the Government should consider abolishing the innovation patent system.

This paper seeks views on ACIP's recommendation that the Government consider abolishing the innovation patent system, and on any potential alternatives to encouraging innovation amongst small to medium enterprises (SMEs).

Making a Submission

IP Australia invites interested parties to make written submissions by **28 September 2015**.

Written submissions should be sent to consultation@ipaaustralia.gov.au

For accessibility reasons, please submit responses by email in Word, RTF or PDF format.

The contact officer is **David Simmons**, who may be contacted on **(02) 6222 3624**.

Please note that, unless requested otherwise, written comments and any associated information submitted to IP Australia may be made publicly available on our website and may be disclosed to other Commonwealth agencies with an interest in this consultation, including, but not limited to, the Department of Industry and Science.

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Background

The innovation patent system is a second tier patent system introduced in 2001 to provide patent protection for less inventive and incremental innovations that would not meet the inventive threshold requirements of the standard patent system. It was specifically targeted at small to medium enterprises (SMEs), whose innovations are often directed at improving, adapting and refining existing technology, rather than generating more substantial innovations.

The policy objective of the innovation patent is to stimulate innovation in Australian SMEs, and in a manner not possible through a standard patent or petty patent (the predecessor of the innovation patent). It aims to do this by offering a relatively quick and inexpensive form of IP protection for lower-level inventions when compared to standard patents. This is to help encourage SMEs to develop and market these lower-level inventions in Australia. The innovation patent system provides substantially the same scope of protection as the standard patent, but it requires a lower inventive threshold and has a maximum of eight years, compared to a 20-year term for a standard patent.

The former government commissioned the Advisory Council on Intellectual Property (ACIP) to enquire into and report on the innovation patent system. One of ACIP's chief considerations in its Review of the Innovation Patent System (2011 – 2013) was how effective the system is in achieving its stated objective of stimulating innovation in Australian SMEs.

In September 2012 IP Australia conducted a separate consultation (the *Raising the Step* consultation), asking whether the inventive step standard for innovation patents should be the same as for standard patents. Stakeholder input into this consultation was fed into the ACIP review.

In its report on the Review of the Innovation Patent System published on 16 June 2014, ACIP was unable to find sufficient empirical evidence to enable an assessment of the effectiveness of the innovation patent system in meeting its objective of stimulating innovation in Australian SMEs. At the time ACIP was therefore unable to make a recommendation to support the retention or abolition of the innovation patent system. ACIP made four substantive recommendations to change the innovative patent system in the event the Government should choose to keep it (http://www.acip.gov.au/pdfs/Final_Report_for_Innovation_Patent_Review.pdf).

Economic Analysis of the Innovation Patent System

Following publication of ACIP's report, IP Australia's Office of the Chief Economist was able to take advantage of the new data capabilities of the Intellectual Property Government Open Data (IPGOD) introduced in 2014, and undertook a comprehensive economic analysis of the innovation patent system. IP Australia has released the findings of its economic study as a research paper, The Economic Impact of Innovation Patents (http://www.ipaustralia.gov.au/uploaded-files/reports/Economic_impact_of_innovation_patents_-_Report.pdf).

This analysis concludes that the innovation patent system is failing to incentivise SMEs to innovate and is imposing an overall net cost on SMEs. In summary, the economic analysis indicates:

- the innovation patent system imposes a regulatory cost on SMEs and individuals of over \$10 million per year. This equates to nearly 95 per cent of the regulatory cost of the system;
- that the private value of innovation patents flow disproportionately to large firms that already file standard patents. The private value is likely to be offset by third party uncertainty costs to consumers and other producers;
- the great majority of Australian SMEs and individuals gain little benefit from the innovation patent system;

- the low level of repeated use by SMEs suggests that the innovation patent is not fulfilling its policy goal of providing an incentive for Australian SMEs to innovate; and
- it is likely that the system is a net cost to most SMEs that use it, and the system has imposed a regulatory burden of more than \$100 million since its introduction in 2001.

In total, the evidence casts doubt on whether the innovation patent is meeting its policy objectives, and suggests that the majority of Australian SMEs gain little value from the innovation patent system, or at least not enough value to use either the innovation or standard patent system again.

ACIP gave this new evidence and findings careful consideration. In May 2015, ACIP released a statement as a corrigendum to its report on the Review of the Innovation Patent, in which ACIP advised the Minister for Industry and Science that it considers it likely that the innovation patent is not achieving its objective of effectively stimulating innovation among SMEs and the Government should therefore consider abolishing the system.

Stakeholder Views Requested

The Government is considering ACIP's revised recommendation along with its report on the Review of the Innovation Patent System published on 16 June 2014.

To assist this consideration, the Minister for Industry and Science has asked IP Australia to consult further on ACIP's recommendation that the government should consider abolishing the innovation patent system.

IP Australia is seeking views from interested stakeholders on

- The ACIP recommendation that the government should consider abolishing the innovation patent system; and
- Any alternative suggestions to encourage innovation amongst SMEs.

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