

Dear sir/madam

I provide this submission as a former research scientist and a patent attorney. I am concerned that abolishing the innovation patent system would have a negative impact on innovation by small to medium enterprises (SMEs). Furthermore, I am not convinced that all of the evidence from IP Australia's report on the economic impact of innovation patents supports ACIP's recommendation that the innovation patent system be abolished. My submission below further details my reasons for this.

I consider amending the innovation patent system and providing reduced fees for SMEs the best approach for stimulating innovation in SMEs.

#### Allowing SMEs to file patent applications stimulates innovation

The lack of subsequent patent application filings by the same applicant does not support the conclusion that the innovation patent system fails to stimulate innovation. There is nothing to say that the system must stimulate innovation from the same applicant. The nature of public disclosure inherent to the patent system means that innovation can be stimulated in other inventors.

I propose that the role of the patent system to stimulate invention and innovation from SMEs is met by merely providing such an opportunity for SMEs. This view is supported by the fact that the total number of innovation patent applications filed each year has been increasing since the introduction of the system in 2001. Denying SMEs the opportunity to file innovation patents because the majority of applicant's do not go on to file further applications disadvantages the minority of applicants that do file multiple innovation patent applications.

#### Certification and renewals is not an indication of innovation

I do not consider that it is a failure of the system because the evidence shows that SMEs do not tend to certify or maintain their innovation patents.

SMEs are generally encouraged by patent attorneys to only certify their innovation patents if there is a real concern with infringement. While more confidence and assurance is provided with a certified innovation patent, I propose that the evidence simply shows that it is mostly large firms that consider the cost of certification to be worthwhile.

Also, if the innovation patent system is directed to lower-tier inventions. These inventions are perhaps likely to be commercially successful. If an invention is not successful, there is no need to maintain an innovation patent associated with it. This is perhaps another reason why innovation patents have a shorter life than standard patents. In situations where inventions are perhaps only partially successful, it stands to reason that an SME would be less likely to maintain an innovation patent compared to a large firm with deeper pockets.

As stated above, the value in the innovation patent system is provided to SMEs in the opportunity to file the application in the first place. As the patent system requires applications to be filed before commercialisation of an invention, it is not possible to only file applications for commercially successful inventions.

#### SMEs do not feel a regulatory burden

The evidence from the report on economic impact of innovation patents states that SMEs and private inventors, as a whole, 'incur approximately 95% of the regulatory burden imposed by the

innovation patent system on domestic applicants'. The use of the term 'burden' suggests that this is a detrimental aspect of the system.

Given that, elsewhere in the report, it is noted that SMEs and private inventors also account for 94% of Innovation patent applications filed it is hardly surprising that SMEs and private inventors account for most of the costs associated with the system.

Moreover, if SMEs are simply paying for their own applications, it is merely an economic construct to say that the statistics indicate that SMEs are disadvantaged because they account for the majority of the cost.

Nevertheless, if the innovation patent system was amended to provide a reduced fee for SMEs (perhaps similar to the US style small/micro entity fee), this may provide a step towards further encouraging SMEs to make use of the innovation patent system.

#### The IP Australia report provides evidence that the system stimulates innovation

It was disappointing to see that very little weight was given to the evidence that indicated that the innovation patent system did stimulate innovation.

The report provided the following evidence that innovation patents are important for SMEs:

- Filing innovation patent applications correlates with firm survival
- Filing innovation patent applications correlates with higher R&D expenditure in the manufacturing sector
- Australian SMEs and individuals account for a majority of innovation patent applications in Australia.

Although the evidence also indicates that a relatively small number of innovation patent applications are filed each year. This could simply be because applicants are filing standard patents at first instance and finding that they do not need innovation patents because of the previously low threshold of inventive step in Australia. With the 'Raising the Bar' changes introduced, we may see that there are more applications converted to innovation patents in coming years.

The value provided, to SMEs, by the option to convert to an innovation patent during prosecution of a standard patent should not be underestimated.

Furthermore, the relatively low use of the innovation patent system by Australian inventors may be due to low levels of invention in Australia due to other reasons and should not be seen as a failure of the system to stimulate innovation.

I urge parliament to consider ACIPs previous recommendations to improve the innovation patent system rather than abolish it.

Yours truly

Matthew Lay BSc(hons) PhD MIPL  
Blackburn, VIC 3130