**Call for Comment**

**APIC Review of the Innovation Patent System**

Dear Member,

**Call for comment to ACIP Review of the Innovation Patent System Options Paper**

**Comments can be sent to** **submissions@chc.org.au** **by COB Thursday, 10th October 2013**

Members would be aware that the CHC is actively seeking opportunities for greater industry incentive to invest in R&D and for options for exclusivity for industry innovation. What some members may not be aware of is that IP Australia offer an innovation patent system with an objective of stimulating innovation in Australian small to medium enterprises (SMEs). This is currently achieved by providing Australian businesses with Intellectual property rights (IPRs) for their lower level inventions to prevent competitors from copying them. Innovation patents are intended to reduce the compliance burden on users of the patent system by providing easier, cheaper and quicker rights for innovations from that of the standard patent.

**Why a review of the Innovation Patent system?**

The [*Intellectual Property Laws Amendment Bill (Raising the Bar) Act 2012*](http://www.comlaw.gov.au/Details/C2012A00035) commenced on the 15 April 2013 and included changes to increase the certainty to Australian inventors of the robustness of their Australian patents and their ability to export their inventions. The innovation patent system provides an eight-year monopoly to encourage sufficient time for investment in developing and marketing the innovation and equal remedies to a standard patent for ‘innovations’ that have a very low level of innovation. Therefore, it is arguable that the innovation patent system, as it currently stands, is inconsistent with the intentions of the Raising the Bar Act to provide greater certainty to Australian inventors.

**Call for comment:**

Chapter 5 of the [ACIP Options paper](http://www.acip.gov.au/pdfs/Options_Paper_Innovation_Patent_Review.pdf) outlines the policy issues and options for consideration to this consultation and includes:

**Option A – No change**

This option takes the ‘wait and see’ approach in that the Raising the Bar has made substantial changes to the legislation supporting the innovation patent system. It would seem reasonable to see how these changes interact and bed down before making any more changes to the system.

The [Verve study](http://www.acip.gov.au/pdfs/Economic_Value_of_the_Innovation_Patent_-_Final_Report_-_Verve_Economics_-_24_Mar_2013.pdf) provides positive data in support of the operation of the innovation patent system, prior to the Raising the Bar Act changes.

**Action** – to support option A please provide data to demonstrate the use of the innovation patent system in adding value to your business. Please also provide data on the weighted average value each innovation patent you have (all data provided will be held in-confidence).

Please note the text boxes expand.

Click here to enter text.

**Option B – Abolish the innovation patent system**

A number of issues that support the abolition of the system in Australia have been identified in the options paper, including that the system creates uncertainty and increased legal costs because of the very low inventive threshold and the fact that an innovation patent doesn’t need to be certified.

The paper also identifies a number of issues that contradict abolition of the system, including SMEs might be discouraged from entering the patent system because the inventive threshold for a standard patent is too high and difficult to navigate and patens are an asset and can be used to obtain funding.

**Action**

Even considering the Verve report, the paper identifies that there is a lack of credible information on how SMEs are using the system. Abolishing this system may remove IP protection that is vital to businesses.

* If you use innovation patents, please provide detailed feedback to the CHC on how the current system assists you to be innovative in the market (data provided will be held in-confidence). Click here to enter text.
* If you could alter the current system, what aspects would you change or what other ideas would you have for an alternative system for protecting low-level inventions?

Click here to enter text.

**Option C – Change the innovation patent system**

There have recently been a number of changes to the innovation patent system due to the final implementation of the Raising the Bar Act. A summary of these changes can be found on page 39 of the ACIP Report. ACIP continues to wrestle with the issues whereby; if the level of innovation is raised to the ‘inventive step’ level, then the innovation patent system is rendered ineffective and might as well be abolished. Where as, if the level of innovation is raised to an intermediate level, then it is difficult to conceive of a suitable test that will be easily understood by users, IP professionals, patent examiners and the courts. It may take decades for the legislative provisions defining the new level of innovation to be tested in the courts, in the interim there will be some uncertainty as to the required level of innovation.

The ACIP invites further comment on the options identified in the paper and to comment on their preferred option for the level of innovation and how this option will make the innovation patent system more robust.

**Action**

* Do you have any specific comments in relation to changes to the innovation patent system?

Click here to enter text.

**For further information contact:**

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