

**PATENTS CONSULTATIVE GROUP
SUMMARY OF MEETING 8 MARCH 2011**

Members of the Patents Consultation Group (PCG) held their first meeting for 2011 in Canberra on 8 March 2011. This paper is a condensed summary of the minutes of this meeting provided for public release.

Progress on the IP Rights Reform project (Raising the Bar Bill) was discussed. The Exposure Draft Bill and Explanatory Memorandum were released in-confidence for third round consultations on 21 December 2010 and publicly on IP Australia's website on 3 March 2011. The deadline for written submissions is 4 April 2011 and IP Australia hopes that the Bill will be introduced into Parliament in the winter sitting.

Members were advised that an Interdepartmental Committee chaired by IP Australia was established to produce a Government response to the Senate Gene Patent Report by June 2011 and to respond to the ALRC 2004 report and ACIP review of patentable subject matter. A Private Members Bill (Human Genes and Biological Materials) was introduced into the Senate on 24 November 2010 and a response from the Legal and Constitutional Affairs Committee is due by 11 June 2011.

An agenda item on the review and application of foreign court judgements to Australian patents was presented by IPTA who queried the rationale and appropriateness of these practices. IP Australia advised that these matters related to a very small number of cases only and there was ample legal authority for the position that a decision obtained by fraud was considered void. The *Patent Act 1990* empowers the Commissioner to ensure the credibility of the patent system, undertake relevant enquiries and to ask applicants/patentees to respond to allegations. This ensures that the determination process provides a fair and just result.

A draft of the Best Practice Guide for Filing a Specification was provided to the group for comment. This guide supports changes to Schedule 3 of the *Patents Regulations 1991* and facilitates quality searches of specifications via online services (ie AusPat). It is anticipated that the guide will be published on IP Australia's website in April 2011.

An update on the consideration of Swiss claims was provided. As a result of PCG discussions, IP Australia had undertaken further consultations with IPTA and considered their concerns about how the appropriate construction of Swiss claims could be addressed while permitting use to continue. IPTA welcomed the opportunity to provide a considered response to this matter.

IP Australia provided an update on International Preliminary Examination and when an applicant files a demand without arguments and/or Article 34 amendments. IP Australia advised that this means was being sought with the intention of addressing grounds of invalidity and encouraging use of preliminary examination. Consequently, the applicant will now be issued a notice indicating that the report will be finalised unless arguments or amendments are received within one month.

An information paper regarding IP Australia's online initiatives for 2011 was reviewed which described the development of AusPat, website modernisation, enhanced online services and e-business capabilities. These initiatives were received positively by the group.

Finally, IPTA raised concerns about the content, appearance and positioning of information on deadlines for responding to examination reports specifically in relation to divisional applications. IP Australia advised that the text and location of information would be reviewed.