

## Productivity Commission at odds with Government's innovation agenda

Recommendations in the Productivity Commission Report into Intellectual Property Arrangements in Australia will significantly weaken the Australian patent system, introduce uncertainty into obtaining and enforcing patent rights and make the patent system more expensive for innovators.

In a submission made this week to the Government, The Institute of Patent and Trade Mark Attorneys of Australia (IPTA) responded to a number of "anti-patent" recommendations, with far reaching ramifications, including abolishing the innovation patent system, introducing an objects clause into the Patents Act, virtually removing the availability of extensions of patent term for pharmaceutical patents, raising the threshold of inventive step and significantly raising patent renewal fees.

Ironically, the report appears to be in conflict with the Coalition Government's Innovation Agenda, which prompted Prime Minister Malcolm Turnbull to say, in support of innovation, "we've got to be prepared to have a go and be more prepared to embrace risk and experimentation".

The Report adopts a unilateral view without substantive evidence that "*Australia's intellectual property arrangements fall short in many ways and improvement is needed across the spectrum of IP rights*". The report also appears to agree, in a seemingly predisposed manner, with certain "participants" that the current patent system hinders innovation and creativity. There is, however, a conspicuous lack of credible evidence to support this view. In addition, Productivity Commission arbitrarily takes a position that the current patent system results in a multitude of low-value patents without clear and convincing guidance on what constitutes a "low-value patent".

More curious still, the report adopts an impractical position that the patent system should only contribute to socially-valuable innovation that otherwise would not occur. There is, however, no direction on what socially-valuable innovation is and how to determine whether such innovation will only occur as a result of the patent system. The report apparently and simplistically considers innovation from an academic perspective and fails to understand, or even consider, the necessary financial investment and risk that is required to commercialise innovation for the benefit of the public; the very reasons why the patent system is designed to offer both rewards and a degree of certainty to innovators and investors.

In relation to the recommendations concerning pharmaceutical patents, the Productivity Commission seemingly demonstrates a complete lack of confidence in the ability of the Australian biomedical research industry to grow, and considers that Australia will forever be a net importer of technology in this space. The Productivity Commission has made no recommendations whatsoever in relation to fostering and developing this industry so that Australia can benefit to a greater extent from the value created by this industry. In this regard the Final Report is extremely short sighted.

IPTA believes that Australian innovation policy, which encompasses the patent system, should provide a substantial incentive and compensate innovators for the risks and financial investment necessary to bring innovation to the market for the benefit of the general public. Australia's current innovation policy should not be weakened and made uncertain based on the academic views of economists who have neither proximity to innovation nor expertise in relation to commercialisation of innovation.

*Dr Grant Shoebriidge, Council Member of the Institute of Patent and Trade Mark Attorneys of Australia (IPTA), the peak professional body representing Australian patent and trade mark attorneys.*

**December 2016**