Response to

Advisory Council on

Intellectual Property (ACIP)

Patenting of Business Systems

ISSUES PAPER

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Advisory Council on Intellectual Property
Patenting of Business Systems
Issues Paper Response

1. Executive Summary

Overall we seem to be running into fragmentation & contention around the World when it comes to Business Systems Patents (Process Methodologies).

This is largely with our struggle to grow and re-define ourselves within our existing Intellectual Property frameworks.

This causes significant waste & slows development & growth.

The entire Intellectual Process requires review & redefinition if we are to grow and expand in a complimentary fashion both nationally & internationally.

We need a governance body & framework that recognises the unlimited capabilities of intelligence & intellect and the various subsets of intelligent creation.

It is encouraging to be part of a process that is at the forefront of intellectual property and intellectual development. As this is the area where we define who & what we are and how we elevate and expand this part of ourselves is important to our ongoing development.

We need to be aware that our existing framework is static and can only turn in on itself. Only elevation of the processes and expansion of the intelligence can compliment our growth & development moving forward.

We need to establish a balanced framework to assist the growth of Intellectual property & ongoing development.

2 World Intellectual Property Governance Review

Looking at the existing IP Framework for this issues paper it is appropriate to establish a true representation of World Intellectual Property Governance.

To do this effectively we need to look at the governance framework and the Business Systems Patents example contained within the ACIP document.

European Union, Japan, USA, Britain & Australia are all different in approach and capability.

- Britain Negative
- EU Negative (some exceptions)
- Japan Affirmative
- US Affirmative
- Australia Affirmative

What does this mean?

It means that the environment is a fragmented, multi-dimensional framework that is imbalanced and provides some individuals with opportunities over others that are excluded from the ongoing development cycle.

In fact it is very limited in its demonstrated understanding of intelligence and collective development moving forward. This may be due to the inward looking approach of the environments. We see that the affirmative all have a different process in place & are evolving independently and in some cases with a co-operative approaches that only includes a portion of the affirmative members and lacks elevated & expansive results. Although the affirmative remain true to evolving creative freedom in our environment, it is a monumental task to continue to elevate and expand intellectually when collective intelligence has outstripped the World Intellectual Property framework capabilities & understanding.

Although there is commonality of approach between the negatives (Britain & the European Union) that is where any synergy ends. Britain & the European Union do not issue Business Systems Patents (Process Methodologies) as there is no technical component to the invention. This is an ignorant approach with fundamentally flawed intellect that appears to be stuck in the industrial age. At the very least it does not recognise the expansiveness of intellect and is narrow & protectionist. Clearly this is a step backwards.

This position dictates that Intellectual Property is a technical subset of a subset of the actual intellect that creates an idea.

It is also ambivalent to the fact that the Global Electronic Environment (GEE) is an

environment where Balanced Creation, Innovation, Alignment and Maturation are key to the ongoing development of our world. Why is this?

This is because the GEE Infrastructure is fundamentally a service provision environment & the Balance required to provide the much needed collective service provision is not maintained within the governance environment.

To further understand this we need to elevate our understand intelligence and intellect. Core Intelligence is energy based (metaphysical) and is complimented most effectively with continual observation & improvement.

We all have core intelligence, so it is the singular commonality that provides the capability to all people to create intellectual property.

All invention and creation is a subset of this core intellect. Therefore the British & European Union approach does not recognise the core intelligence that is the heart of the creative process. Because of this many of their consumers are excluded from the IP opportunities in this area.

Neither the affirmative or the negative have been able to get to the heart of intelligence and the true intellectual property framework which consists of the following:

- Metaphysical Intellectual Property (MIP)
- Physical Intellectual Property (PIP)
- Collective Services Intellectual Property (CSIP)

Each of these intellectual property types is parented by the MIP process therefore the MIP process is the primary creative intellectual property.

The PIP process is a successful physical outcome from a MIP process.

A CSIP process is a successful capture of collective service needs captured primarily by the MIP process.

The CSIP is the area that requires immediate attention as it defines the elevation and expansion of World Electronic Cohesion for global consumers.

We will get into these intellectual process throughout the course of this document.

Only when we have a framework that is based upon balanced, aligned collective intelligence can we move forward with confidence on our creative environment.

Australia as the smart country should be engaging these opportunities and taking a leadership role in the ongoing development of Intellect & Intellectual Property Governance.

3 What is the core intelligence within Intellectual Property (IP)?

To better understand core intelligence we need to visit the operation of the Human Being. A biological machine that is bound within the rules of technology to function at all much like the GEE.

We are a biological system that is the outcome of a series of sub-systems that requires energy to function. We require this energy to move and to grow and to think.

This simple irrefutable understanding demonstrates that all thought is the outcome of an energy based biological technology function.

By its very nature this is a measurable technical component to all metaphysical creation and is the heart of Intelligent Creative Energy.

Understanding this we need to look at the creative energies in an energy based creative environment.

Core Creative Energies

- Metaphysical Intellectual Property (MIP)
- Physical Intellectual Property (PIP)
- Collective Services Intellectual Property (CSIP)

MIP is the outcome of an Observation & Improvement Cycle across a pre existing intelligence.

PIP is a created physical entity that is a subset of the MIP process.

CSIP is a framework & process methodology in an elevated, expansive consumer based electronic service provision environment.

In short MIP = Pure Creation.

PIP = Physical subset of MIP.

CSIP = Process Methodology of MIP.

To be effective in growing and Governing Intellectual Property we need an intelligent aligned framework that recognises Intelligent Creative Energies & provides Balanced Governance frameworks for each of the core energies.

For Example, The MIP now has access to a Global Electronic Platform which means that World Aligned Service Provision is the next wave of Governance and

Service Provision.

This means that the PIP which is a subset of the MIP is now in effect a subservient component of global consumer governance and service provision.

The MIP surrounds the PIP and provides can provide an open platform for technology & Operating Systems.

The CSIP is the IP that develops the utilisation of the Global Electronic Environment (Cyberspace) as it applies to Global Consumer Services.

Without an intelligent governance framework & global consumer based services Cyberspace will fall victim to the same ills as the physical world at the moment.

This is an unsustainable position for ongoing development.

We need to address this lack of understanding & establish & champion a framework that allows humanity to grow & better understand itself.

4 IP, will it evolve and expand or stagnate & degenerate?

It its current framework Intellectual Property cannot evolve effectively because there is no collective intelligence governing the environment.

Presently IP is stagnating as it is choking in a multidimensional environment where no collective intelligence is applied.

Until we realise and develop a learning environment within the Global Intellectual Property environment now we will continue to fragment the issues until the opportunities have passed us by. If this is to be the case we effectively turn our backs on improving our collective future.

If we expand and develop our IP environment we enhance development opportunities & add value to the intellectual domains.

There is a lack of expansive intelligence in the moral usability & international requirements they remain inward and protectionist.

4.1 So What's Intellectual Property Elevation?

Recognition and awareness of the intellectual development state.

A collective understanding complimenting an inward looking framework.

4.2 So What's Intellectual Property Expansion?

Creation of a framework that compliment the intellectual development state and establish international acceptance and ongoing sponsorship moving forward.

4.3 What is Intellectual Stagnation?

The current outcome of fragmented Intellectual Property development.

4.4 What is Intellectual Degeneration?

The outcome of a fragmented restrictive environment that does not collectively understand and develop the creative state and current creative environment.

4.5 Observing Intelligence Creatively

Constantly Observing & Improving both the environment & the opportunities within the intellectual development domain.

5 Evolving needs for IP to meet collective needs

Let us look at Process Methodologies as an example of this ongoing need. Process Methodologies are the next wave of opportunities for the Global Electronic Environment.

Areas such as electronic transactions and consumer based services such as voting, education & healthcare to name but a few require an intelligent consumer solution that is service based and solves existing problems and provides a cohesive environment moving forward that meets the governance needs of all consumers.

I do not like to think that the next wave of co-operative intellectual property is being pitched as a business systems patent. This demonstrate the IP frameworks lack of understanding towards responsible intellectual property development moving forward.

The Global Electronic Environment is an operational framework that is limited only by our imagination, this means that it has evolved into an open platform for everyone to create complimentary intellectual property. In most cases individuals are better placed to provide sustainable solutions than business as they maintain an independent view.

6 Business System vs Process Methodology?

Business System is a dangerous term to describe IP as it insinuates that the domain is the property of business. This is incorrect as business is largely responsible for the fragmentation & lack of alignment & development of the intellectual property environment & governance framework.

In name it also serves to exclude the creative individual from the process.

Process methodologies can be used for many purposes, such as enhancing a service or providing a governance services.

7 Instil Creative Recognition, Expansion & Development.

To do this we need to recognise and develop the creative framework and this in turn provides expanded IP capabilities and additional frameworks to apply balanced governance to World Intellectual Property Environments.

It also opens IP up to a wider global audience as it identifies and catalogues the creative energies and steps within Intellectual Property and provides them to Global Infrastructure Consumers.

It also creates a Global standard that allows expansion and development.

The attached orbital diagram entitled appendix a. demonstrates a recognisable creative and a framed observation layer that captures the process life cycle of Creation, Innovation, Alignment & Maturation. It also encapsulates a necessary balance of Cost, Capability & Consciousness.

8 Response to ACIP Documented Issues

8.1.1 What is the significance of business systems patents to the Australian economy and what are the expected future growth trends?

There are many significant opportunities at the moment to establish complimentary business systems patents. For example many areas in the electronic domain are determined as Global issues, any patents in this domain should outline how they meet existing global needs, such as UN or OECD charters for example.

The response to this is dependent on a highly developed understanding of Global Service Environments and needs analysis as it applies to collective complimentary services & process. To compliment this understanding any patented process methodologies must demonstrate benefits to Consumers, Business & Government as these are the areas impacted by the electronic domain.

Taking this into account Business Systems Patents are not only necessary, but are imperative to grow the Australian economy in an elevated, expansive structured fashion within the electronic domain. The opportunity exists to provide Australia & the World an independent aligned framework for business and technology to work within.

Because of Australia's size and position in the intellectual world we are the best placed to provide an enhanced framework for IP.

It is expected that the future volume of IP applications will continue to remain relatively low as the ongoing service provision needs are met within the electronic domain.

Although the number of applications remains dependent of the intelligence of the governance framework.

It is envisaged that the creation of the complimentary IP processes would create an improved operational environment that would help identify new opportunities for Australia & the world as a whole.

If we ignore these opportunities we waste resources competing in many areas where there is no need and will cannot realise the new opportunities that alignment offers in growth and expansive development.

8.1.2 What are the likely implications of business systems patents on the growth of Australian businesses and the research sector?

In some cases they can be restrictive, yet there are many instances where a solution based on collective needs to an ongoing problem will compliment and grow the environment. These process methodologies need to be engaged as IP, as they allow businesses to use cost effective services that engage and enable business across the entire economy, this means uninhibited aligned growth across specific areas.

This alignment can allow for organic growth within the electronic arena and allow organisations to grow and expand in confidence that the primary process enablers are standardised and provide a platform for ease of use and ongoing development in the electronic domain.

It is envisioned that such IP would need to be both innovative and mature & would fill a usability gap that is not currently aligned and provide synergies to the entire Consumer, Business & Governance marketplace. It can also create a common operating environment that continues to open the electronic domain up to development.

This means that Business Systems Patents can provide an ongoing learning environment, as it is commonly understood that as one need is met, another will

appear that needs addressing (onwards & upwards). Such is the nature of our environment.

Having an open creative platform can only improve both the Economy & future research.

8.1.3 What are the likely implications of business systems patents on Australia's export market and international competitiveness?

Business Systems Patents that meet the requirements outlined above would be ambassadors for Australia in the International Domain. They can provide an Innovative Common electronic environment that is designed and defined around ongoing usability needs and provides for organic growth and ongoing development.

It is envisaged that some of this intellectual property could easily be adopted as World Electronic, Co-operative, Service Alignment Methodologies. This means that Australia can actively define the future in a complimentary fashion.

To establish alignment across service process methodologies can only enhance Australia's ongoing growth at home and abroad.

Internationally some of these collective BSP's should sit within this domain.

8.2.1 Do business systems patents encourage innovation and the dissemination of knowledge?

This can be dependent on the IP owner, although it is envisaged that process methodologies should be used to encourage growth, alignment and standardisation in certain areas within the electronic domain.

This encourages active co-operation to encourage growth and provide an organic learning environment for the dissemination of knowledge. An intelligent responsible owner should seek to actively promote and grow the IP by assisting in the deployment of the process methodology.

It is also understood that if we can leverage process methodologies to meet determined collective needs they can in fact promote significant growth & provide new innovation opportunities in an improved environment that has more opportunities due to the increased usability.

8.2.2 Are there fundamental business processes which, if patented, could inhibit innovation or impose significant costs on third parties, or is it likely that the development of alternative business systems would be encouraged?

Yes, although this is wide open to any form of interpretation. A balanced

governance and review framework is needed to explore IP claims.

It is recommended that these patents be granted when the collective needs are identified & they can demonstrate areas for improved service that provide growth opportunities for the electronic domain.

It is envisioned that these process methodologies should be designed to compliment the domain and increase usability.

There are also many areas where mature process methodologies can be designed that will make it easier to use the electronic domain & promote low cost ease of use to all parties and the long awaited growth.

It is expected that co-operative frameworks in some areas will provide opportunities for further development.

Many patents will greatly reduce excess cost and waste in this domain.

8.2.3 What are the implications of business systems patents on Austalian industry generally? Are business systems patents likely to inhibit growth in the market place?

Generally Business System Patents can be complimentary by design & greatly enhance and enable the environment.

BSP's can if fact speed up solution & service delivery and compliment the marketplace and deliver complimentary results to an environment that otherwise may waste resources & opportunities for decades. This hotch potch approach process is no longer sustainable in our environment.

This means if they are designed and promoted appropriately they can greatly reduce cost & waste in all industries & markets. They can also provide opportunities for national & International growth.

There are many opportunities that will fall into this category.

It is understood that the nature of the patent is represented in the application, therefore it should be easy to determine the intended impact.

Licensing laws that promote co-operative take-up of complimentary service processes would be an invaluable governance tool.

8.3.1 Does current Australian patent legislation and practise in relation to business systems patents provide an appropriate balance between innovation, access to technology and economic growth?

While Australia maintains arguably the most sophisticated and open intellectual property domains it is experiencing similar problems to Japan & the US.

Attempting to come to terms with fragmented environments with inward focus.

The simple answer is no, we experience the same problems as other nations.

This is because we need to actively monitor & develop the IP domain as it is integral to how we define ourselves from one moment to the next.

These ongoing problems are due to the fact that as soon as a framework is established the collective intelligence outstrips the capabilities of the framework and the intelligence is then stifled by the framework.

How do we effectively manage this?

We can elevate our understanding of intelligence & develop an IP framework that can clearly represent the realms of Intellectual Property with an elevated IP framework that represents Metaphysical, Physical & Collective Services Intellectual Property**.**

To do this it needs to address both competitive and co-operative intellect.

If we explore this opportunity we effectively create a governance framework that more appropriately represents the capabilities of intellect.

The payback is that it increases our capabilities and provides an expansive environment.

It also simplifies the task of Governing & Categorising IP.

The beauty of said approach is that if we elevate something, we create a new framework to transition to. This means that we can improve in a complimentary fashion.

We can also measure IP against both frameworks.

8.3.2 Should Australia include technical implementation as a requirement for patentability?

No.

In the information age there are many environments that are exposed to a lack of

development, putting it quite simply they are limited by the intelligence of the framework..

Technology is not limited by BSP's as they can provide access to all recognised technology platforms that can function & compete to provide any enhanced BSP service delivery.

Inability to recognise this has borne a largely wasteful electronic domain that struggles to move forward with cohesion.

To move forward we must support BSP's & process methodologies that encompass functions or aspects of electronic service provision to support & promote growth.

8.3.3 What is the anticipated impact of the patent legislative changes, introduced in April 2002, which aim to increase the presumption of validity of granted patents?

This is of course dependent on the underlying need that is outlined in a BPS patent, if there is no documented need represented it really is open to succession by a mature BSP that meets and or exceeds a collective identified need.

As the frameworks and our understanding grow the application of information/electronic patents will change to meet the evolving needs.

8.3.4 Is the ERGAS report correct in stating that most business methods would fail the standard tests of patentability?

Generally yes.

Although it is important that we develop a greater understanding of the BSP domain and a more complete understanding of our national & international needs.

8.3.5 Should there be special patent procedures for processing business systems patents?

Yes.

In effect they should be subject to a rapid review & definition. They should be subject to a needs analysis & of course be measured with a benefit review.

Any procedure should recognise the need for a broad constructive contribution to building collective service frameworks that both enhance and grow the e-commerce environment.

8.3.6 Should business systems be considered to be within a "field of technology" as referred to in s27 of the TRIPS agreement?

It is preferential to describe BSP's as being within a field of collective intelligence that meets a need that is both documented and is key to ongoing development.

8.3.7 Is the 20 year term of a standard patent grant appropriate for business systems, or would the 8 year term of an innovation patent be more appropriate?

If a BSP is a significant contribution to ongoing growth and development and is mature by design is should be granted for at least 20 years. It is prudent if it is integral to ongoing development it should transfer 50% of its property at this point to a governance advisory group with a view to providing improved governance.

This provides a complimentary review and development framework.

It should be understood that some needs will be in place as long term e-commerce enablers and should be treated as such.

8.3.8 Are business systems patents being assessed within an appropriate timeframe?

No.

The process needs to be expedited to maximise opportunity and alleviate ongoing marketplace confusion & waste, see 8.3.5 for more detail.

Note. Elevating & Expanding the environment will prove to be invaluable to this issue.

8.3.9 Are granted business systems patents of sufficient quality? Is the standard for inventive step being correctly applied?

In some cases yes and in some cases no as many patents are not subjected to a needs analysis and are not qualified appropriately due to the broad nature of some of the claims.

I am unable to comment on the application of the inventive step at this point.

Although, as mentioned an appropriate needs analysis in an elevated framework would address this question.

8.3.10 Do Australian patent examiners have appropriate training and expertise to assess business systems patents? Are more resources warranted?

It is difficult to assess as collective intelligence is constantly on the move and the existing resources must operate in within a rather narrow framework that is governed by intelligence & legislation based largely on physical invention.

They are also subjected to a fragmented global framework that can at times be derogatory to all parties.

It is expected that if we adopt an elevated & expansive framework this would warrant new procedures and training that would both expedite the process & weed out the chaff.

8.3.11 Is IP Australia making appropriate use of non-patent literature? Should more active sharing of information with other offices be explored?

Unable to comment on the first question as I am not familiar with the current process?

Although, there is much relevant documentation in the electronic domain that can be of assistance.

For the second part we should look at exchanging information with other offices when an appropriate reciprocal framework is in place with ongoing governance review. We should define and champion an appropriate framework.

Our main area of concern at this point is that we are now looking at how we grow and expand collectively.

8.4.1 Are Australian businesses properly equipped to deal with business systems patents?

It is my belief that most businesses are ill equipped to deal with this as the competitive nature of business development causes most businesses to go it alone. This means that there is more fragmentation and more expense for different businesses to do the same thing in a fragmented fashion.

It is extremely difficult to build trust and acceptance of services within this environment, this is largely to the competitive inward looking mind-set that prevails.

Business needs to be educated about the possibilities and growth opportunities available in the BSP domain as it can enhance performance across all markets.

Business should also be more open to co-operative licensing and guidance in regards to BSP's.

8.4.2 Are there sufficient information and search facilities available to assist the Australian public seeking to protect their intellectual property or avoid infringement? If not what facilities should be instituted?

There are insufficient facilities and knowledge available at the moment and there is no provision for "lay-people".

It is recommended that a review be completed and information on IP frameworks and process be documented in a clear and simple fashion and be made available to the public to assess the environment.

8.4.3 How should issues of jurisdiction with respect to business systems patents be dealt with?

It should be engaged to sponsor collective development where possible as cohesion of BPS's can assist the environment.

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Licensing & Guidance support should be actively engaged to compliment this approach.

It should of course be a value based judgement from within an elevated intellectual framework.