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5 September 2002
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Ms Kay Collins
Secretary
ACIP
P.O. Box 2000
Woden ACT 2606

Dear Kay

Re: Response to ACIP – Patenting of Business Systems Issues Paper

My business partner Mr Gillon McLachlan and I, have developed an innovative business system and are currently in the PCT stage of obtaining a patent (International Patent Application No. PCT/AU01/00894). We have invested a significant amount of time and money developing and attempting to commercialise our business system. I have reviewed the Issues Paper dated July 2002 and have detailed below, my argument supporting my claims. I believe, that it is crucial, that ACIP, in its deliberations, takes into account the interests of Australian entrepreneurs like ourselves. It is clear that substantial benefits will flow through to the Australian economy upon commercialisation of Australian developed business systems in Australia.

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

While I cannot comment on the implications for other Australian businesses, I can give you an insight into the implications for our business. Our business system has wide applicability in many industries both in Australia and globally. In fact the most attractive markets for our business system are outside of Australia, particularly the US and Western Europe. However, given the decline in availability of venture capital overseas and in Australia, we are targeting small applications of the business process locally. Our aim is to use one or more, small local applications of the process to underwrite the development of the core software technology required to support the business process. Then it is possible to leverage the core software to market the business system in more attractive overseas markets. Once we get commercial backing we will develop the software in Australia and establish our core technical capabilities here. As small players, having a patent valid in Australia is an important lever in our negotiations with larger and more powerful organisations we may need to partner with to commercialise the business system. As shown by many successful entrepreneurs, having a local market test and launch their product is a key success factor.

If business systems patents were not valid in Australia, we may need to significantly change our approach to commercialisation and, I believe, this will impact the likelihood of our success. Without patent protection, our value proposition to potential partners will be significantly reduced. There will be an increased risk that by revealing our business system and proposed application, potential partners could proceed without our involvement, therefore excluding our commercial interests. However, I would expect that, with a limited

number of potential Australian partners with global business activities, this risk would be reduced. If, business systems patents are not valid in Australia, our chances of successfully developing a local application of the business system, will be reduced. In that event, our only remaining option would be attempt to commercialise the business system in the US, where business systems patents are recognised and there are many attractive opportunities to develop the business system. If we are able to raise the additional capital to move the US and are successful, it would obviously mean that the development of the core technology and future profits would be lost to Australia. Giving small players a chance against massive competitors, and giving the players something with which to market to investors is even more important than simply inspiring innovation per se and should be a key priority for ACIP. It is also important to enable export of ideas themselves (creates much more value for Australia than filling bulk carriers with ore). To this end, ACIP should be constantly looking to expand the application of patent law in Australia, rather than constrain it.

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

I believe business systems patents are no different to other patents. The prospect of obtaining patent rights, in providing property rights for business systems innovations, was a significant motivator in encouraging us to invest in the development and commercialisation of our business system. There are only limited circumstances where our business system is of use and in the absence of property rights, we would not have pursued the original concept any further.

With regard to dissemination of knowledge, the patenting process ensures innovations are documented and published. This is probably more important in the case of business systems, because in many instances these systems can occur inside an organisation's boundaries and can be less apparent to external observation than more tangible innovations.

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?

If in the examination process, the tests of novelty, inventive step and industrial applicability are rigorously applied, there is little danger of existing fundamental business systems being patented. If ACIP considers this has been and still is a serious risk, then the examination process needs to be strengthened. With regard to the discovery of innovative business systems, that may one day become fundamental business processes, patent protection is required to ensure that these business systems are developed, published and commercialised. In this respect business systems are no different to more tangible innovations in areas such as science and engineering that have become fundamental to modern societies. As with more tangible innovations, third parties are able to gain access to innovative business systems through commercial arrangements.

8.3.4 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?

Again I argue that business systems patents are no different to other patents. Business systems innovations can require significant amounts of time and money to develop and commercialise. Investors need to ensure that the duration of property rights is sufficient to make a sufficient risk adjusted return on the investment. In our case we are seeking to

convince major corporations and government authorities to adopt our business process, which may take several years to implement if they agree to proceed.

As a final request, I would ask that if ACIP decides to recommend changes to the patenting process for business systems, that these changes not be retrospective. It is important that existing claims to property rights are not removed without compensation.

I hope my thoughts and comments are useful inputs to this important debate.

Yours Sincerely

Craig Auwardt