

Fast 101 Pty Ltd

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16th August 2002

Ms Kay Collins
Secretary
ACIP
PO Box 200
WODEN ACT 2606

Dear Ms Collins

Re: Written Comments in Response to ACIP Issues Paper "Patenting of Business Systems"

Fast 101 Pty Ltd has applied for patent protection of a business process in Australia, the US and 37 other countries.

As an interested party I would therefore like to submit the following comments for discussion as part of your review of "Patenting Business Systems".

- Without the ability to protect intellectual property it would be totally futile for an SME to develop a system or process involving large companies. I have personally had said to me on numerous occasions by banks and large companies referring to our process "great idea, why do we need you". Innovation needs to be encouraged and protected if Australia is to become the "Clever Country" that politicians keep promoting.

Australia being a relatively small country tends to have a few large companies which effectively dominate their respective market segments, as I'm sure the ACCC will attest. Australia, probably more than many larger countries, needs to protect the intellectual property of its innovators in order to level the playing field.

Inventions relating to innovative business approaches are not protectable - at least in any meaningful way - through any other intellectual property rights. It seems wrong to discriminate against innovators in this area (whose ideas otherwise satisfy the requirements of patentability), merely because those ideas do not fall into traditional areas of technological invention.

- Many companies are becoming concerned about process patents but the reality is that for the last 4 to 5 years at least they have failed to heed the continual warnings from the legal profession regards protecting their businesses and now they are trying to neutralise those that have had the foresight to act. The companies that oppose business process patents have had the same opportunities as everybody else, so where is their innovation? Surely the fear of exclusion would serve to encourage a company to be an innovator rather than a follower, as most companies seem content to be. As we all know, companies are not forced to patent their ideas, they just have to disclose them.

Some critics have argued that patent protection is not appropriate for inventions that relate to ideas implemented by means of computer systems because the IT industry moves so fast. This may be so for many inventions - they are out of date very rapidly - but is no reason to exclude from patentability such ideas. If the patent system is not appropriate in a particular situation, then the inventor/company can simply make the decision not to use it, or to withdraw an application when the invention is no longer commercially significant.

- By encouraging and protecting business innovation there is the potential to create significant intellectual property export opportunities. Most Australian entrepreneurs would seek to establish their companies at home before moving into the US market. If Australia does not protect their intellectual property they will have no choice but to move straight to the US and Australia will have missed another opportunity.

Whilst I believe the above points are very important I do see a potential problem with the number and scope of the business process patents being applied for. It may be possible and desirable to create a special patent category whereby a business process patent, relating to commercial procedures, has a 20 year duration but after the first 5 years the patentee cannot refuse to license the process to a third party, under prescribed commercial terms. This would ensure that the patentee is rewarded for his innovation and commerce in general is not needlessly restrained by the patent.

Many of the criticisms of patents in this area relate to clarity and scope of patent rights, and such points are not without substance. However, the solution is not to take the easy path and simply deny such rights, but to take a pragmatic approach and address the reasons for these perceived problems, as is being done in the USPTO. More rigorous examination would be a good start.

I trust that the above comments will assist with your review of business process patents. If I can be of further assistance please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bill Duncan', followed by a horizontal line extending to the right and ending in a vertical bar.

Bill Duncan
Managing Director