

Dear Sean Applegate,

In response to the options paper released by the Advisory Council in Intellectual Property, ACIPA would like to reiterate its broad support for the introduction of a defence of experimental use under patent law. Our submission to the issues paper covers the main themes of our position.

Accordingly, ACIPA is opposed to Option B, which proposes that there should no change to the present law. Similarly, ACIPA has deep reservations about Option C1, which proposes the modification of the definition of exploitation to not include experimental use, without further defining the term. Such an amendment would only add to further any uncertainty about the status of experimental use and research under patent law.

ACIPA supports as first preference Option C7, which proposes an exemption for fair experimentation with inclusive permitted uses.

ACIPA supports - alternatively - Option C8, which proposes an exemption for experimenting on the subject matter of the invention, with inclusive permitted uses. However, that option is a second preference. ACIPA would prefer that the distinctive between experimenting on and with an invention was not a definitive factor - rather one of many.

We would also like to provide you with a final draft of paper on the topic of patent law and experimental use. The reference is: Rimmer, M. "The Freedom To Tinker: Patent Law and Experimental Use", *Expert Opinion on Therapeutic Patents*, February 2005, Vol. 15 (2), (forthcoming). It may be useful for your inquiry. It covers much of the context of the topic including US law, European law, and Australian litigation, policy debates, and the United States-Australia Free Trade Agreement.

We would welcome participating in any further consultations over the nature and scope of any defence dealing with experimental use.

Kind regards,
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