



30 August 2002

Mr Jeff Roberts  
The Secretary  
Advisory Council on Intellectual Property  
PO Box 200  
WODEN ACT 2606

Dear Mr Roberts

**Innovation Patent – exclusion of plant and animal subject matter**

I refer to the letter from Owen Malone dated 2 July 2002 inviting AWB Limited ("AWB") to make a submission in relation to the exclusion of plant and animal subject matter from the recently introduced innovation patent.

AWB, through its Grain Technology division, is engaged in research and development activities in relation to new wheat varieties and production processes. Accordingly, the exclusion of plant matter from the innovation patent is an issue of significant importance to AWB, and as a key stakeholder AWB is interested and requests that it be involved in all further consultations.

AWB has carefully considered this issue and at this stage has decided not to make a submission seeking either the removal or retention of the exclusion. This is because a number of uncertainties in relation to the scope and application of the innovation patent in this area, and the state of flux within the plant breeding industry, make it difficult and premature at this point in time to realistically assess the impact of any such changes.

For example, the innovation patent system is very much in its infancy and there is uncertainty as to the requirements of the "innovative step" test and how that may translate into the plant breeding field. There is also a lack of data regarding the costs, timeframes and prospects of success for certification and enforcement of innovation patents.

In relation to the plant breeding/technology industry, it is currently undergoing a number of changes that are relevant. In particular:

- Technology is changing at a rapid pace, with biotechnology tools becoming more common in plant breeding. It is not clear at this point in time whether these technologies will gain public acceptance, what types of technologies are likely to be used in the industry in the future, and therefore whether there is a need for additional intellectual property protection possibilities.

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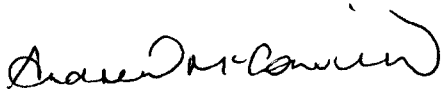
*The Australian Grains Marketer*

- There has been a shift in the last couple of years from public breeding programs to the private sphere. A number of plant breeding divisions previously within government departments have now been privatised or "spun out". This shift is still in its early stages, and the industry, business models and new players have not yet settled and established themselves. The movement into the private sphere will mean that there will be more interest and demand by the private sector breeders to seek intellectual property rights. It is not clear at this point whether the available intellectual property schemes (ie Plant Breeders Rights and Standard Patents) are adequate, or how the increased demand on intellectual property protection will affect the intellectual property users.
- Following from the previous point, the players in the varietal development industry are changing. It is therefore not clear at this point who the major companies will be, and their particular niches in the market.

AWB therefore submits that it is premature to review the exclusion of plant matter from the innovation patent regime and what effect that might have on the relevant industries, and so the exclusion of plant matter should again be reviewed in 12 to 18 months, once the general advantages and disadvantages of the innovation patent system have become more evident, and the plant breeding industry has stabilised after adjusting to the move from the public to the private sphere.

I thank you for inviting AWB to be involved in this review process, and as a key stakeholder again request that AWB be involved in all further consultations on this matter.

Yours sincerely



**Andrew McConville**  
General Manager, Grain Technology