

**Submission to the Advisory Council on Intellectual
Property (ACIP) Review of Patentable Subject
Matter**



Australian Government

**Department of Innovation
Industry, Science and Research**

October 2008

The central aim of the Government's innovation and industry policy is to increase prosperity through internationally competitive business and sustainable economic growth. In line with this aim, the Department of Innovation, Industry, Science and Research believes that any changes to Australia's Intellectual Property (IP) regime should abide by the following principles. They should:

- effectively encourage innovation;
- enhance our competitiveness in a global environment; and
- be consistent with our international obligations.

To encourage innovation, the IP regime should balance, in its design and operation, incentives for innovation through the assignment of effective IP rights, against the societal benefits possible through the diffusion of knowledge.

The Australian IP regime should play a part in contributing to the development of an environment which will enhance the competitiveness of Australian firms both in the domestic and international markets.

The framework for Australia's IP regime must also be consistent with our treaty obligations under the World Trade Organisation's Trade Related aspects of Intellectual Property Right (TRIPS) Agreement and the Australia United States Free Trade Agreement (AUSFTA).

The Review of the National Innovation System states that:

The Australian High Court has recognised that the level of invention required to obtain a patent in Australia is lower than elsewhere.

And

At the very least in the interests of both harmonisation and better public policy the hurdle for registering a patent in Australia should be as stringent as other countries.

This leads to Recommendation 7.2 which states:

Patent law should be reviewed to ensure that the inventive steps required to qualify for patents are considerable and that the resulting patents are well defined so as to minimise litigation and maximise the scope for subsequent innovators.

The Department recommends that ACIP advises whether the approach advocated by the Review of the National Innovation System is likely to achieve the policy objectives as outlined above. We also seek your advice on alternative approaches you would recommend to achieve these policy objectives.

IP Australia, which is a prescribed agency within the Innovation Department, is making a separate submission reflecting its expertise and operational familiarity with the Patents Act.