AGENCY/DEPARTMENT: IP AUSTRALIA

TOPIC: Support for innovation patents

REFERENCE: Question on Notice (Hansard, 31 May 2017, page 116-117)

QUESTION No.: BI-9

Senator KIM CARR: What I am asking you is whether or not IP Australia supports innovation patents. You have been administering them for some time now. Have they been successful? Ms Kelly: Our research would suggest that the innovation patent has not been successful in meeting the objective for which it was established. It is certainly valued by a range of our customers for one reason or another, but in terms of assisting SMEs—again, Dr Mitra-Kahn could give you chapter and verse—our research suggests it may be costing the SMEs more than it is benefiting them. Senator KIM CARR: So you would support their abolition? Is that the position that you have put? Ms Kelly: Again, I think you are asking us to give a policy opinion on a matter that is currently being considered by cabinet in terms of the government's response to this report.

Senator KIM CARR: Would there be a detrimental impact on industry—for manufacturing—if these patents were abolished?

Ms Kelly: Certainly, some users of the innovation patents would see it as a detriment that that is no longer an option to them. It is used as an enforcement tool, usually by larger industries. We have a system of pre-grant opposition and taking out an innovation patent can give you an early enforcement option, which would not be available. But that is not the purpose for which the innovation patent was established.

Senator KIM CARR: Often, part of the innovation system itself is to adapt. Which particular branches of manufacturing would be disadvantaged by their abolition?

Ms Kelly: I do not think any particular branches of manufacturing would be disadvantaged. Senator KIM CARR: Who uses them at the moment? Which branches of manufacturing use them? Ms Kelly: I think we would have to take that on notice to give you an accurate answer. As Dr Mitra-Kahn said, it is largely Australian applicants and small to medium—

Senator KIM CARR: Please, if you would.

Dr Mitra-Kahn: Happy to take it on notice.

Senator KIM CARR: Thank you. How many applications have you received in recent years, for instance? What fields of industry do they cover?

Ms Kelly: Is that for on notice?

Senator KIM CARR: Yes, please, if you would.

ANSWER

1. Have they [Innovation Patents] been successful?

The policy objective of the innovation patent is to stimulate innovation in Australian SMEs. The innovation patent aims to do this by offering a relatively quick and inexpensive form of IP protection for lower-level inventions when compared to standard patents.

In 2014, the former Advisory Council on Intellectual Property (ACIP) reviewed the innovation patent system and was unable to find sufficient empirical evidence to enable an assessment of the effectiveness of the innovation patent.

In early 2015, IP Australia's Office of the Chief Economist, using the new data capabilities of IPGOD, undertook a comprehensive economic analysis of the innovation patent system. This analysis concludes that the innovation patent system is failing to incentivise SMEs to innovate and is imposing an overall net cost on SMEs.

The evidence casts doubt on whether the innovation patent is meeting its policy objectives and suggests that the majority of Australian SMEs gain little value from the innovation patent system, or at least not enough value for repeat use.

ACIP gave this new evidence and findings consideration. In May 2015, ACIP released a statement as a corrigendum to its Review of the Innovation Patent System in which ACIP advised the then Minister for Industry and Science that it considers it likely that the innovation patent is not achieving its objective of effectively stimulating innovation among SMEs and the Australian Government should therefore consider abolishing the system.

The Productivity Commission, in the 2016 Report on Australia's Intellectual Property Arrangements, also undertook its own assessment of the innovation patent system and described it as a patent experiment that has failed. The Report recommends the abolishment of the innovation patent. The Report recommendations are currently being considered by Government.

2. Who uses them [Innovation Patents] at the moment?

There were 7,159 active innovation patents as at 31 December 2016, of which 1,327 (18.5 per cent) were certified, meaning they can be enforced by the owner. These active applications were filed in the period 2009 through 2016, with the maximum life of an innovation patent being eight years with an annual renewal process.

IP Australia cleans and harmonises its applicant data on annual basis, and in the process, collects information about the applicant's firm size and industry sector. The latest available dataset includes applications filed up to 31 December 2016. Table 1A shows the number of active innovation patents and their age. Table 1B provides a subset of active patents that are also certified.

		Domestic*					
Application Year	Age (yrs)	Individual	SME	Large firm	International**	Other***	Total
2009	7-8	57	100	16	70	9	252
2010	6-7	85	116	15	139	24	379
2011	5-6	119	185	15	206	20	545
2012	4-5	155	229	32	253	27	696
2013	3-4	181	327	22	322	29	881
2014	2-3	185	289	43	331	20	868
2015	1-2	391	481	38	689	36	1635
2016	0-1	455	482	32	916	18	1903
Total		1628	2209	213	2926	183	7159

Table 1A: Active innovation patents

* Domestic applicants are divided into three categories of individual, SME (less than 200 employees) and large firms

** For international applicants firm size is unknown

*** Other includes applicants with mixed or unknown applicant type

		Domestic*					
Application Year	Age (yrs)	Individual	SME	Large firm	International**	Other***	Total
2009	7-8	23	35	3	9	2	72
2010	6-7	29	51	7	26	11	124
2011	5-6	26	63	6	48	5	148
2012	4-5	32	77	7	73	6	195
2013	3-4	38	128	2	85	9	262
2014	2-3	20	80	17	31	2	150
2015	1-2	28	80	5	106	4	223
2016	0-1	14	50	3	86	0	153
Total		210	564	50	464	39	1327

Table 1B: Certified active innovation patents

* Domestic applicants are divided into three categories of individual, SME (less than 200 employees) and large firms

** For international applicants firm size is unknown

*** Other includes applicants with mixed or unknown applicant type

3. Which branches of manufacturing use them?

There are 198 certified and in force innovation patents from applicants who are firms classified in the manufacturing sector as at 31 December 2016. On some occasions multiple applicants co-file the same patent application, which results in 210 applicants from the manufacturing sector against the 198 applications. There are cases where two firms from different manufacturing subsectors file a patent together. Table 2 shows the number of times a firm from each of the manufacturing subsectors is named an applicant on a certified innovation patent as at 31 December 2016.

Table 2: Australian innovation patent applicants that were in force and certified as at
31 December 2016 by manufacturing sub sector

Manufacturing sub sector	Applicants	
24 - Machinery and equipment manufacturing	49	
22 - Fabricated metal product manufacturing	39	
16 - Printing (including the reproduction of recorded media)	35	
21 - Primary metal and metal product manufacturing	20	
19 - Polymer product and rubber product manufacturing	15	
23 - Transport equipment manufacturing	14	
20 - Non-metallic mineral product manufacturing	14	
25 - Furniture and other manufacturing	5	
12 - Beverage and tobacco product manufacturing	5	
18 - Basic chemical and chemical product manufacturing	4	
11 - Food product manufacturing	3	
13 - Textile, leather, clothing and footwear manufacturing	3	
14 - Wood product manufacturing	3	
15 - Pulp, paper and converted paper product manufacturing	1	
17 - Petroleum and coal product manufacturing	0	
TOTAL	210	

If a firm holds more than one innovation patent, they will appear more than one time. The count represents the manufacturing sub-sector coverage of innovation patents. The manufacturing sub sector is defined from the first two digits of the Australia and New Zealand Standard Industrial Classification (ANZSIC) code, and all sub-sectors are included in Table 2.

4. How many [innovation patent] applications have you received in recent years, for instance?

IP Australia received 2,322 innovation patent applications in 2016, up from 1,249 ten years ago. Table 3 below provides the total number of applications received over the last ten years from Australian residents and from overseas applicants. The upturn in overseas applications in 2016 has been linked to an increase of approximately 500 patents received from Chinese applicants, many of which have been excluded from registration on procedural grounds.

	Total	Australian	Overseas		Australia
Year	applications	origin	origin	2,500	
2007	1,255	919	336		
2008	1,312	915	397	2,000 -	
2009	1,386	1,000	386		
2010	1,538	1,015	523	1,500 -	
2011	1,767	1,095	672	1 000	
2012	1,947	1,116	831	1,000	
2013	1,770	1,090	680	500 -	
2014	1,602	945	657		
2015	1,855	1,125	730	0 -	1 1
2016	2,322	1,068	1,254	20	07 2008 2009

Table 3: Innovation patent applications 2007-16



5. What fields of industry do they cover?

Over the past ten years, IP Australia received a total of 10,288 innovation patent applications. Using Australian Business Register data we are able to derive the ANZSIC code for 77 per cent of all Australian applicants that are registered firms.

Table 4 shows the number of times an Australian firm that has been matched with an ANZSIC code filed an innovation patent over the past ten years. If a firm filed more than one innovation patent, they will appear more than one time.

Industry sector	Applicants*	Percentage**
C - Manufacturing	1,201	29%
M - Professional, scientific and technical services	758	18%
F - Wholesale trade	709	17%
K - Finance and insurance	248	6%
E - Construction	209	5%
L - Rental, hiring and real estate services	205	5%
G - Retail trade	196	5%
S - Other services	106	3%
N - Administrative and support services	93	2%
J - Communication services	87	2%
R - Arts and recreation services	65	2%
D - Electricity, gas and water supply	54	1%
I - Transport and storage	50	1%
P - Education and training	46	1%
Q - Health care and social assistance	40	1%
O- Public administration and safety	29	1%
B – Mining	26	1%
H - Accommodation, cafes and restaurants	9	0%
A - Agriculture, forestry and fishing	0	0%

Table 4: Australian Innovation patent applicants 2007-16 by industry sector

* Only includes 77% of domestic firm applicants as the remainder can not be matched against the Australian Business Register

** Percentages rounded to nearest whole number