



New Zealand Institute of Patent Attorneys Inc

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Lisa Bailey
IP Australia

Dear Ms Bailey

NZIPA submissions to IP Australia on Public Consultation: Introducing an objects clause into the Patents Act 1990

Introduction

These submissions have been prepared by the New Zealand Institute of Patent Attorneys Inc. (NZIPA).

The NZIPA was established in 1912. It is an incorporated body representing most Patent Attorneys registered under the New Zealand Patents Act, and who are resident and practising in New Zealand.

The current membership of NZIPA comprises 158 Fellows, 1 Honorary, 36 Students, 17 Non-resident, 15 Associates and 6 Retired.

INTRODUCING AN OBJECTS CLAUSE

The Consultation paper seeks input on two different options for an options clause. An objects clause is said to provide 'additional clarity and guidance to the community on the purpose of legislation, assists the courts in interpreting the legislation, and can be used to resolve uncertainty and ambiguity'.

The paper also notes that IP Australia has already received feedback that 'an objects clause is neither necessary nor helpful'. We agree with that view. We don't think it is necessary to introduce an objects clause into the Act.

The New Zealand Parliament passed the New Zealand Patents Act 2013 which came into effect on 13 September 2014.

The explanatory note to the Patents Bill 2008 asserted that 90% of New Zealand patents are granted to overseas owners and that 'much of the financial and social benefits of these patents may flow overseas'.

The New Zealand Bill as originally drafted was silent on promoting innovation and economic growth. This prompted one submitter to the Parliamentary select committee to question why the explanatory note to the Bill set out a fundamental policy objective that was not reflected in the Bill itself. The Bill was subsequently amended to recite the promotion of innovation and economic growth.

The consultation paper notes that 'the New Zealand objects clause emphasises the Act should provide for an efficient and effective system that balances the interests of patent owners and society'. The actual wording of the clause is that the New Zealand Act 'promotes **innovation and economic growth** while providing an appropriate balance between the interests of inventors and patent owners and the interests of society as a whole'.

The remainder of the New Zealand objects clause is largely directed to New Zealand specific policy objectives that are not relevant to Australia. These include addressing the perceived problem that 90% of New Zealand patents are granted to overseas owners, the concerns of Maori, and regulation of the New Zealand patent attorney profession by Australia.

As noted in the consultation paper, to date there has been no court decision in New Zealand referring to the objects clause. We are also unaware of any IPONZ decision or examiner's comment that refers to the objects clause.

The generality of the wording of an objects clause introduces a lack of clarity as to how it should be interpreted, which is contrary to public interest.

We suggest that, if an objects clause is to be introduced (which we reiterate it should not, in our view), IP Australia adopts a version of section 3(a) of the New Zealand Patents Act 2013. Suitable wording is as follows:

'The purposes of this Act are to provide an efficient and effective patent system that promotes innovation and economic growth while providing an appropriate balance between the interests of inventors and patent owners and the interests of society as a whole; and complies with Australia's international obligations'.

Yours faithfully,



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