3 December 2018

IP Australia
consultation@ipaustralia.gov.au

Our ref: Z475AU18

Dear Sirs

Re: Intellectual Property Law Amendment (Productivity Commission Response Part 2 and Other Measures) Regulations 2018

Thank you for your call for comment.

Innovation patents

It appears that Schedule 1, Part 1 of the amendments to the regulations should commence immediately after the commencement of Schedule 1, Part 3 of the amendments to the Act.

**Items 19 and 21: Subregulations 3.5AC(3A) and 3.5AC(5A)**

The proposed subregulations appear to have unintended consequences. On our reading:

- the explanatory memorandum suggests that these subregulations are concerned with whether non-English amendments are taken to amend the specification; whereas
- the proposed subregulations go further to prescribe when those amendments are taken to amend the patent specification.

The distinction may be relevant if Section 114 and Regulation 3.14 come into play.

**Items 22, 23 and 30: Subregulations 3.5AC, 3.5AF(2E), 3.5AF(2F) and 22.15A**

The proposed subregulations appear to have unintended consequences. On our reading:
• the explanatory memorandum suggests that the applicant must respond to the Commissioner's notification within a two-month time limit; whereas

• the subregulations require compliance within that timeframe.

By way of example, if:

• the Commissioner notifies the applicant of a standard patent 'to file a certificate of verification for the translation' (per proposed Regulation 22.15A – our emphasis); and, as one might expect

• the applicant subsequently recognises an error in the translation;

then compliance with the notification would not be possible because a translation known to be erroneous cannot be verified.

It seems that the regulations should allow for filing a corrected translation (accompanied by a certificate of verification) in response to a notice issued under proposed Regulation 22.15A.

Yours sincerely

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