To: consultation@ipaustralia.gov.au.

Thank you for the opportunity to comment on Amending the inventive step requirements for Australian patents.

My opinion is that the question should be answered as follows:

**P1: Option IS-4.**
- **Reason 1:** This approach aligns best with the approach taken by a number of our trading partners (in Europe and some parts of Asia where EPO grants are accepted).
- **Reason 2:** It shows clear guidance for change for the Office and the Courts. The PC proposal should be implemented to align the Australian system with the EPO practice. This requires showing clear intent for change in the letter of the legislation. Explanatory memorandum provides additional guidance when there is ambiguity, but the letters of law (including precedents) is not changed by explanatory memorandum, see *Re Bolton* [1987] HCA 12, 162 CLR 514.

Option **TS-1.**
- **Reason:** This approach align best with our trading partners.

Option **TA-2.**
- **Reason:** Given the expected timetable of such bills, it gives adequate notice to introduce changes as soon practicable but without retrospective effect.

**P2:** No answer.

**P4:** Yes (not retrospectively).

Reason: The intention is to change the law to better align the law with the rest of the world. This will have consequences, but the intention is this change. This question best can be answered when the courts will interpret the changes and I would not take on the task of guessing hypothetical outcomes. The relevant consideration now is whether there are any possible negative consequences that might outweigh the benefit of the objective of the change, to which the answer is: No.

**P3, P6:** If the policy is to align Australia with with the approach of the EPO (which I agree with), explicit legislation to this effect is desired. It should be considered that the person skilled in the art (PSA) in European practice is not interpreted the same way as in Australia. Without change in the letter of the legislation in relation to the PSA, the inventiveness requirement is still likely to produce a different outcome (a lower threshold in Australia).

**P5:** No.

Kind regards,

Charles Smith