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Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

Submission Website: <http://www.pc.gov.au/inquiries/current/intellectual-property/make-submission#lodge>.

Office of the Deputy Vice-Chancellor
(Research)

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Submission to Productivity Commission draft report into Australian's Intellectual Property Arrangements.

The University of Queensland welcomes the opportunity to provide comments on the Productivity Commission's *Intellectual Property Arrangements* Issue Paper.

1. Information Request 6.2: Experimental Use

Cost and Benefits of an exemption from infringement for experimental activities that use a patent invention. Are there any examples in Australia where the efforts of researcher have been hindered by the lack of such an exemption?

The experimental exemption provisions are not well understood and are often wrongly assumed to mean any use of a patented subject matter in the course of research would be exempt from an infringement action. The current exemption still provides a risk to Universities that an infringement action could be taken for using patented subject matter in research. However, to the best of UQ's knowledge our researchers have not been restricted in their ability to do research.

2. Draft Recommendation 15.1: Open Access

All Australian, and State and Territory Governments should implement an open access policy for publicly-funded research. The policy should provide free access through an open access repository for all publications funded by governments, directly or through university funding, within 12 months of publication. The policy should minimise exemptions. The Australian Government should seek to establish the same policy for international agencies to which it is a contributory funder, but which still charge for their publications, such as the Organisation for Economic Cooperation and Development.

In principle, the University of Queensland is supportive of publicly funded research being open access after publication so long as there are provisions to allow for situations which also involve industry partners who for commercialisation reasons need to restrict access until appropriate registered rights are sought.

3. Chapter 8: Business methods and software patents

DRAFT RECOMMENDATION 8.1

The Australian Government should amend s. 18 of the Patents Act 1990 (Cth) to explicitly exclude business methods and software from being patentable subject matter.

The discussion paper has conflated Business Method Patents and Software patents (BM&S). The exclusion of software patents could render highly valuable and socially important technology prone

to copying and reverse engineered if left to be protected by copyright alone and could significantly hinder research. Software based research solve complex problems for which there are no other solutions. At the University of Queensland novel algorithms have been developed (and patent protection sought) which allow computers to be used to solve problems that were previously insoluble. These novel algorithms are not simply doing the calculations faster but using novel approaches that reduce the processing load on the computers and enable the computers to achieve outcomes that are time sensitive in diagnostic and machine control systems, for example.

The discussion paper also does not provide clear guidance on whether new methods, processes or equipment that is controlled by software to provide new and useful outcomes to society would also be excluded on the mere grounds that the system / project contains or is controlled by software. If the Commission's intent is to extend the exclusion to these areas of patentable subject matter then there would be a significant hindrance to research and the translation of research if companies cannot access appropriate protection.

4. Chapter 17: International cooperation

DRAFT RECOMMENDATION 17.1

Australia should revive its role in supporting opportunities to promote global cooperation on intellectual property policy among intellectual property offices through the World Intellectual Property Organization and the World Trade Organization to avoid duplication and reduce transaction costs.

The University of Queensland as research intensive institution seeking to exploit its research outcomes globally, minimising the cost of seeking IP protection is exceedingly important. Thus, harmonisation of global IP laws is important in providing significant costs savings and reducing the costs hurdle in commercialising publically funded research. This would also apply to Australian innovators seeking to take their IP overseas. The more Australia's IP laws diverge from those of the major global markets the greater the cost of compliance to local innovators.

Your sincerely

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