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**FEDERAL COURT OF AUSTRALIA  
PRINCIPAL REGISTRY**

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LEVEL 16  
LAW COURTS BUILDING  
QUEENS SQUARE  
SYDNEY NSW 2000

Your Ref:  
Our Ref:

5 October 2012

The Chairman  
Productivity Commission  
Locked Bag 2  
Collins Street East  
MELBOURNE VIC 3000

Attention: Mr Alex Maevsky

Dear Sir,

**Compulsory Licensing of Patents**

The Commission released an issues paper in relation to its inquiry into compulsory licensing of patents under the *Patents Act 1990* on 9 August 2012. As identified in that paper, the Federal Court of Australia (Federal Court) may, on application, order a compulsory licence under the Patents Act to allow the applicant to work a patented invention. In view of the Federal Court's role, it would be inappropriate for it to comment on the many policy issues raised in the Commission's paper. The Federal Court, however, felt it may assist the Commission in its inquiry if the Court provided some information about its jurisdiction, powers, approach to the management of individual proceedings and judicial education.

The Federal Court exercises the judicial power of the Commonwealth under the Constitution across broad and diverse areas of federal jurisdiction. It is both a trial court and hears appeals from

- single judges of the Federal Court;
- single judges of State and Territory Supreme Courts exercising federal jurisdiction in intellectual property (including patents) matters;
- single judges of the Supreme Court of Norfolk Island in both criminal and civil matters;
- Federal Magistrates in non-Family Law matters; and
- a number of other bodies (e.g. Fair Work Australia, Administrative Appeals Tribunal; Superannuation Complaints Tribunal; Australian Competition Tribunal; Copyright Tribunal of Australia and Defence Force Discipline Appeals Tribunal).

The Federal Court has a significant trial workload in intellectual property matters and hears all appeals (regardless of whether these are from a single judge of the Federal Court or any State or Territory Supreme Court) Australia wide in these cases. Of relevance to the discussions in the Commission's paper, the Federal Court also has a significant workload in competition law and, in a number of jurisdictional areas, must apply a public interest test. It also has a close connection with both the Australia Competition Tribunal and the Copyright

Tribunal of Australia. The Presidents and the Deputy Presidents of both Tribunals are currently serving Federal Court judges and staff of the Federal Court provide the registrar and administrative support required by both Tribunals.

The Federal Court has wide case management powers. In civil proceedings these are exercised within an overarching framework of resolving disputes according to law as quickly, inexpensively and efficiently as possible. The Federal Court utilises an individual docket system for the management of its cases. Under this system cases are allocated to a 'docket judge' at commencement and, other than in unusual circumstances, remain under the management of that judge until finalisation. The familiarity that the docket judge gains in dealing with each case saves time and cost in eliminating the need to explain afresh each time the matter comes before a judge and allows for greater consistency of approach as each case progresses. In practice it results both in fewer management events and interlocutory disputes. In tandem with the individual docket system, the Court also operates national panels in some specialist areas of jurisdiction, including patents, ensuring that all panel cases will be heard by judges with expert knowledge and experience in the jurisdictional area. In addition, it also operates some special listing arrangements, for example a 'Fast Track' which allows for cases meeting certain criteria to be heard and decided very quickly with streamlined preparatory documents and procedures.

The Federal Court completed, at the end of 2011, a total revision of its rules of court, written in plain and simple English from the perspective of a party, rather than the Court, as the actor. The Chief Justice has issued 143 approved forms for the purposes of the rules which can be downloaded from the Federal Court's website. The Chief Justice has also issued a significant number of Practice Notes which provide additional authoritative information to parties and their lawyers on particular aspects of the Federal Court's practice and procedure. These complement particular legislative provisions or rules of court, set out procedures for particular types of proceedings and notify parties and their lawyers of particular matters which may require their attention. One current Practice Note relates to proceeding under the Patents Act and details procedures to be followed aimed at accelerating the identification of issues and generally to improve the facilitation of the trial process in such matters.


The Federal Court makes extensive use of ancillary processes to assist parties to proceedings and the Court in the resolution of disputes. It has been the leader in Australia in the use of alternative dispute resolution, regularly referring cases to mediation by a Federal Court Registrar/Mediator or an expert external practitioner as well to other suitable persons for resolution by other another alternative dispute resolution process. Even where such a referral does not result in a complete resolution of the dispute, it frequently leads to resolution of some aspects or, at least, a narrowing of the issues. Where appropriate the Federal Court also refers questions to a referee for inquiry and report and has a wide discretion as to how it might best deal with the report received. As relevant to the discussion in the Commission's paper, use of Federal Court's power to obtain an expert referee's report could be a very cost effective aid to the Court and the parties in a determination of the quantum of just and reasonable compensation for a compulsory licence order.

The Federal Court places particular importance on ongoing judicial education and, for many years, has maintained an extensive program of education for the benefit of its judicial officers. This includes accessing education offered by external bodies, such as the National Judicial College of Australia, Judicial College of Victoria and the Australasian Institute of Judicial



Administration, as well as organising education, both substantive and procedural, specific to the Federal Court and its particular jurisdictional areas. Federal Court specific education, where appropriate, can be done in conjunction with bodies such as the Law Council of Australia or Law Schools; and often includes participation of international and national experts. This tailored education is very important in building and deepening the specialist knowledge of judges who aspire to become or who are members of panels. The Federal Court has also very successfully used its judicial education to develop the knowledge of its judges in preparation for significant new jurisdiction or changes in areas of law within existing jurisdiction.

Yours sincerely

 John Mathieson  
**Deputy Registrar**