



February 24, 2005

Mr Sean Applegate
ACIP Secretariat
P.O. Box 200
WODEN ACT 2606
sean.applegate@ipaustralia.gov.au

Dear Mr Applegate and the Secretariat,

The Australian Society for Medical Research (ASMR) is the peak body representing health and medical researchers. In addition to direct membership, ASMR represents the sector through 42 affiliated professional societies and Medical Colleges, representing some 15,000 people actively involved in health and medical research in Australia. In addition, corporate and disease related foundation memberships bring a further 100,000 Australians with an interest in health and medical research into association with ASMR. Our mission is to foster excellence in Australian health and medical research, and to promote community understanding and support for health and medical research in Australia. ASMR achieves these goals through public, political and scientific advocacy.

I am writing, on behalf of The Australian Society for Medical Research, to submit comments on the Advisory Council on Intellectual Property's Experimental Options paper (dated December 2004).

The core issue of the Paper relates to whether the Commonwealth should amend the Patents Act to allow exemption from patent infringements for "experiments" (defined by "seeking to discover the unknown and testing principles") performed on the subject matter of a given patent. The document sets out a number of options (A-E, with parts, listing pros and cons), based, in part, on a variety of external submissions. As pointed out in the Paper, the matter, as it currently stands is open to interpretation (by commercialisation arms, patent attorneys, the courts and by researchers themselves). For example, some researchers felt that experimentation on patented inventions should be allowable, whereas others indicated that experimental use should be encompassed within a granted patent as an exclusive right of the patentee, as a "reward" for being a pioneer in a given field.

ASMR's position is that

1. Medical and scientific research and innovation, particularly in relation to direct improvements to human health, should not be stifled by complex patent and other intellectual property restrictions. Whilst patent protection is vital to ensure appropriate investment in the development of new drugs and other forms of treatment, patents should not act to restrict further basic research.
2. Researchers should be permitted to perform "experiments", if they so chose, even with the expectation that they, or the relevant bodies funding their research, do not stand to commercialise or profit from such activities. In this respect, the various "C" options (C7, C8, C1) might be further refined.
3. Careful consideration must be given to the impact any of the options (put forward in the Options paper) have on researchers' (independent of the inventor(s) or patent owner(s)) ability to publish data (oral, web or paper-based publication. etc) since:
 - (a) publication is the primary vehicle by which knowledge is disseminated and disruptions to this flow of knowledge could impact adversely on improvements to human health and cause unnecessary engagement of limited resources
 - (b) publication is the empirical readout of researchers' productivity and is tightly linked to career development and grant funding.

We hope these comments are useful. Please do not hesitate to contact us if you require any further information.

Sincerely,

A handwritten signature in black ink, reading "Levon Khachigian". The signature is written in a cursive style with a large initial 'L'.

Levon Khachigian, Ph.D., D.Sc.
Executive Director, President-elect,
for the Executive,
The Australian Society for Medical Research