

2 May 2013

By email

Inquiry into the Services Sector
New Zealand Productivity Commission
PO Box 8036
The Terrace
Wellington 6143
NEW ZEALAND

Dear Sir

SUBMISSIONS BY NZIPA ON "BOOSTING PRODUCTIVITY IN THE SERVICES SECTOR"

On behalf of the New Zealand Patent Attorneys Incorporated (NZIPA), I *attach*:

- NZIPA's submissions.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Corinne Blumsky', with a horizontal line underneath.

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Councillor**

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Response by NZIPA to the Issues Paper released by the New Zealand Productivity Commission entitled “Boosting productivity in the services sector”

2 May 2013

Summary of submission

Patent attorneys

Patent attorneys hold a unique position in New Zealand's innovation and services sectors. The patent attorney profession continues to evolve and respond to the changing needs of the New Zealand and global environments.

Patent attorneys operate in the global arena assisting New Zealand business take their ideas and innovation to the world. Patent attorneys understand the need to be smart about intellectual property – protection is important but commercialisation more so. They provide real support to New Zealand's innovators through identification and enhancement of ideas, protection and commercialisation.

Today's patent attorney is completely different to the patent attorneys of old. Thirty years ago the patent attorney mostly rubber stamped, checking for any similar inventions or protections required. Today's patent attorney sits alongside New Zealand's inventors and innovators, identifies their point of difference, protects them, often invests in them and identifies courses of action to commercialise New Zealand's innovations and inventions.

This submission focuses particularly on international trade in services and the issues related to intangible assets in the service industries.

Intangible assets and skills

The NZIPA agrees with the Productivity Commission that 'Intangible assets have become increasingly important as sources of innovation and productivity gains, and are particularly relevant for service firms'.

The development of a national IP strategy is vital for New Zealand. Australia has a cohesive strategy whereas New Zealand currently does not. As New Zealand and Australia move closer towards a single economic framework, it is imperative that the relationship between the two economies is not one of inequality and that there are benefits to both. Where equality does not exist, the weaker economy (in this case New Zealand) will become an economic loser. A sound strategy will insulate New Zealand from this possibility.

It is important that the Government work with NZIPA members to 'create effective intellectual property settings that foster an environment where businesses can effectively create, manage, and utilise intellectual property'¹. Patent attorneys are at the centre of innovation in New Zealand. They know what works, what is missing in the New Zealand environment and how Government and business can work together to foster the best environment for innovation and commercialisation – and lead to productivity gains. They also have experience of what has worked (and what has failed) in overseas jurisdictions.

Government funding and education can provide a role in assisting new and existing New Zealand service industries to achieve a protectable position – making them a more attractive prospect for private investment and growth. We would argue that current government funding is misdirected and does not place enough emphasis on the protection of ideas and commercialisation – and their relationship to productivity and economic growth.

¹ Building Innovation progress report, August 2012, <http://www.mbie.govt.nz/pdf-library/what-we-do/business-growth-agenda/BGA-progress-report-building-innovation-august-2012.pdf>

International trade in services

We agree with the Commission that many services are highly tradable across borders. Some of our member firms have been trading services internationally for over one hundred years. We agree that developments in information and communication technologies are increasing the extent to which other services can be traded internationally. Patent attorneys have been actively providing high skilled/high waged services across borders for many years.

Patent attorneys instruct agents outside New Zealand to carry out tasks on behalf of New Zealand clients. These tasks include freedom to operate analysis, intellectual property right acquisition and enforcement.

Patent attorneys in New Zealand carry out similar tasks on behalf of clients outside New Zealand. These clients are typically other patent attorney firms or corporations with their own intellectual property departments.

Many New Zealand firms represent New Zealand clients and foreign clients in Australia and the South Pacific.

One patent attorney firm with offices in New Zealand has set up an office in Sydney to provide services to Australian and international clients. Many other firms have long established relationships with Australian firms that effectively represent a permanent presence.

Many patent attorneys based in New Zealand regularly travel internationally. In some cases it is to meet with clients who are based overseas. Such visits involve educating and advising clients on New Zealand issues.

1. The New Zealand Institute of Patent Attorneys

This submission is made by the New Zealand Institute of Patent Attorneys Incorporated (NZIPA).

NZIPA represents nearly all patent attorneys registered to practise before IPONZ who are resident in New Zealand.

The submission addresses areas where we have particular expertise (registered and unregistered forms of intellectual property (IP) and innovation) and global experience.

Accordingly, our submission touches on the topics addressed by the Issues Paper particularly under the headings of:

- International trade in services
- Intangible assets and skills.

We would welcome the opportunity to meet to discuss aspects of our submission, our unique position in the innovation and services sectors, and how the patent attorney profession continues to evolve and respond to the changing needs of the New Zealand and global environments.

2. The role of the patent attorney industry in boosting productivity

2.1 Patent Attorneys

As a profession, patent attorneys operate in the global arena assisting New Zealand business take their ideas and innovation to the world. Patent attorneys understand the need to be smart about intellectual property – protection is important but commercialisation more so. They provide real support to New Zealand's innovators through identification and enhancement of ideas, protection and commercialisation.

Patent attorneys have many touch points with their clients which enable them to easily detect relevant, marketable and commercial ideas. As a result of their engagement patent attorneys:

1. Regularly visit New Zealand businesses to enable early identification of innovative ideas;
2. Develop strategies to protect those ideas and innovations in key markets through varied intellectual property rights;
3. Educate New Zealand businesses about the range and scope of those intellectual property rights both in New Zealand and overseas;
4. Take equity in New Zealand businesses to assist with the commercialisation of ideas and innovations they see have potential which may not otherwise get to market without our assistance; and
5. Are actively involved in the commercialisation of ideas and innovations by sitting at the negotiation table, drafting and reviewing related documents and providing strategic commercially relevant and pragmatic advice across a broad range of issues (i.e. commercial issues not just those that are IP related).

Patent attorneys are a highly educated profession. Many of the patent attorneys registered in New Zealand are both legally (ie bachelor of laws or higher) and technically (ie bachelor of science or higher) qualified as well as being registered patent attorneys.

They work with New Zealand businesses across all sectors from fashion to telecommunications, and from wine to biotechnology. Patent attorneys are attuned to the opportunities and challenges which New Zealand businesses face both locally and internationally.

Patent attorneys are globally focussed. They travel regularly and are abreast of issues that will affect New Zealand businesses as they seek to commercialise their innovations and take them to the world.

Most importantly, patent attorneys have a unique insight into how New Zealand business can (and should) use the intellectual property systems in New Zealand, Australia and further afield to maximise commercial advantage on the world stage. To that end, NZIPA believe that more can be done to encourage New Zealand businesses to further protect and commercialise innovations that have viability and will provide a net return to the New Zealand economy. The NZIPA views this as a critical way of boosting productivity.

NZIPA are keen to be involved in any initiative that has a focus on results in the realisation of commercial gain from innovation and a boost to productivity in New Zealand.

2.2 Contribution to New Zealand economy

In 2011, the gross revenue of the patent attorney industry was \$132 million. Of this gross revenue, 66 percent came from patent work, while the rest came from work related to trade marks, designs and other IP rights². These figures take no account of the value of commercialisation of rights the patent attorney industry assisted New Zealand business to acquire. Clearly it is the commercialisation process that brings the greatest gains to the New Zealand economy. There is currently no means of assessing those gains, nor of benchmarking for the purposes of determining whether change brings positive or negative results to productivity.

In 2011, the patent attorney industry contributed \$210 million in output and \$43 million in GDP.

IP related work and activities within the industry created about 480 full-time equivalent jobs in 2011. Each full-time job generated by the industry contributes about \$80,420 to GDP. This GDP per FTE contribution is about \$7,000 greater than the GDP per FTE of all industries in the business services sector.

2.3 Common misconceptions of the patent attorney industry

Intellectual property is the term used to describe rights in intangible things. Those rights can be registered (as in the case of patents, designs, trade marks or plant variety rights) or unregistered (as in the case of copyright, trade secrets, goodwill and reputation etc).

Although described as "patent attorneys", the practice is not so limited. Patent attorneys will routinely advise on a wide range of intellectual property issues as well as providing New Zealanders with advice on how to structure, fund and advance their businesses.

Reconceptualising the patent attorney industry is important. The industry is an important link in the innovation ecosystem, as well as an exporter of services.

Today's patent attorney is completely different to the patent attorneys of old. Thirty years ago the patent attorney mostly rubber stamped, checking for any similar inventions or protections required. Today's patent attorney sits alongside New Zealand's inventors and innovators, identifies their point of difference, protects them, often invests in them and identifies courses of action to commercialise New Zealand's innovations and inventions.

A New Zealand patent attorney uses their relationships with others in the New Zealand environment to develop, extend and ready New Zealand products and services for market (here and overseas). New Zealand patent attorneys have extensive relationship networks with manufacturers, investors, and other services.

It is useful to have a look at who our New Zealand patent attorneys are:

- They are young – the majority of partners in NZ firms are 40-50
- They are highly educated. Most are Barristers and Solicitors, and most have multiple tertiary qualifications (often law combined with a degree in science and technology)

² BERL, Exploring the effects of single economic market policy on the New Zealand patent attorney industry, September 2011 and BERL, Update of the economic impact of the patent attorney industry, April 2012.

- They are mobile – spending time in the field, on the farm, in the factory, and in the board rooms of their clients
- They form product/service development strategies
- They invest in innovations they believe in, to take them to the next level
- They are often instrumental in helping clients to take an innovation out of the garage and into the marketplace.

3. Intangible Assets and Skills

The NZIPA agrees with the Productivity Commission that 'Intangible assets have become increasingly important as sources of innovation and productivity gains, and are particularly relevant for service firms'.

As a profession we are very familiar with intangible assets in the form of intellectual property. As mentioned above, "Intellectual property or IP" is the term used to describe rights in intangible things. Those rights can be registered (as in the case of patents, designs, trade marks or plant variety rights) or unregistered (as in the case of copyright, trade secrets, goodwill and reputation).

3.1 Developing a National Intellectual Property Strategy

NZIPA and others from the patent attorney industry should be involved and provide input into the development of an innovation framework as patent attorneys have unique insights and skills to offer.

A national intellectual property strategy needs to be developed as part of the wider innovation framework.

The development of a national IP strategy is vital for New Zealand. Australia has a cohesive strategy whereas New Zealand currently does not. As New Zealand and Australia move closer towards a single economic framework, it is imperative that the relationship between the two economies is not one of inequality and that there are benefits to both. Where equality does not exist, the weaker economy (in this case New Zealand) will become an economic loser. A sound strategy will insulate New Zealand from this possibility.

It is important that the Government work with NZIPA members to 'create effective intellectual property settings that foster an environment where businesses can effectively create, manage, and utilise intellectual property'³. Patent attorneys are at the centre of innovation in New Zealand. They know what works, what is missing in the New Zealand environment and how Government and business can work together to foster the best environment for innovation and commercialisation. They also have experience of what has worked (and what has failed) in overseas jurisdictions.

3.2 Government funding and IP protection

Government funding for new ideas and innovations is currently only available to determine whether an idea is unique and has the potential to be taken to market.

However that is only half of the picture. If the idea is to be effectively commercialised (or licensed overseas) then it needs to be protected.

There is no funding for the protection of innovation through the use of intellectual property rights. It is at the protection stage many New Zealand businesses fail due to lack of awareness and funding.

Better forms of funding can also be addressed when developing a National IP Strategy.

³ Building Innovation progress report, August 2012, <http://www.mbie.govt.nz/pdf-library/what-we-do/business-growth-agenda/BGA-progress-report-building-innovation-august-2012.pdf>

Funding for protection in turn affects financing of start-up (and existing) firms based on intangible assets. Such funding is very difficult to obtain from conventional financial institutions. Generally it is obtained via venture capital or so called angel investor funding. Most venture capital and angel investors will be looking for a protectable position - a key part of which will be the ability to monopolise a service offering through registered and unregistered IP rights.

Government funding and education can provide a key role in assisting new and existing New Zealand service industries to achieve that protectable position - and hence make them a more attractive prospect for private investment and growth. We would argue that current government funding is misdirected and does not place enough emphasis on the protection of ideas and commercialisation - and their relationship to productivity and economic growth.

Generally speaking, New Zealand business is more ignorant of the value of IP than its overseas counterparts. A large part of the patent attorney's role is to educate New Zealand business - too often this education occurs after the opportunity to obtain a protectable position has been lost. Where remedial action is available it will usually be complicated and time consuming.

Industries experiencing rapid technological changes are generally the worst at seeking correct advice at an early stage, and stand to lose significantly through lack of protection. Wholesale education at all levels of interaction is required - and the Government plays an important part in that educative role through its interaction with fledgling businesses seeking funding and/or advice.

Again, education can and should form part of a National Intellectual Property Strategy.

3.3 Value of intellectual property in New Zealand

Currently there are no statistics available in New Zealand about the value of intellectual property (including, in particular, revenue generated by New Zealand business from the commercialisation of registered intellectual property rights).

This information is needed to accurately measure the effectiveness of any initiatives implemented to fund, educate or encourage the commercialisation of intellectual property.

We suggest setting up a system through Statistics New Zealand to annually collate and track the value of commercialisation of intellectual property.

3.4 Business Growth Agenda

We see the work of the Productivity Commission as fitting within the Government's overall Business Growth Agenda.

Innovation is one of the key ingredients of the agenda. Patent attorneys are at the centre of innovation and commercialisation in New Zealand.

We are keen to work with Government and Government agencies to create effective IP settings that foster an environment where businesses can effectively create, manage and utilise intellectual property.

4. International Trade in services

We agree with the Commission that many services are highly tradable across borders. Some of our member firms have been trading services internationally for over one hundred years. We agree that developments in information and communication technologies are increasing the extent to which other services can be traded internationally.

The Issues paper outlines four modes of international services trade. These are:

- **Cross-border trade** where a service flows from the territory of one country to another, for example banking or architectural services provided over the internet.
- **Consumption abroad** refers to situations where a consumer travels to another country to obtain a service, for example a tourist or international student.
- **Commercial presence** involves a service supplier establishing a permanent presence in another country to provide the service, for example a hotel chain.
- **Presence of natural persons** where an individual temporarily travels abroad to provide a service, for example consultancy services provided by an individual.

4.1 Cross-border trade

As described above, patent attorneys no longer simply obtain intellectual property rights for their clients. However, much of the advice we give our clients is subject to client privilege. For the purposes of describing our global business it is easier to use intellectual property right acquisition as such rights are more visible to the public.

Patent attorneys instruct agents outside New Zealand to carry out tasks on behalf of New Zealand clients. These tasks include freedom to operate analysis, searching, intellectual property right acquisition and enforcement.

Patent attorneys in New Zealand carry out similar tasks on behalf of clients outside New Zealand. These clients are typically other patent attorney firms or corporations with their own intellectual property departments.

Many New Zealand firms represent New Zealand clients and foreign clients in Australia and the South Pacific.

4.2 Commercial presence

One patent attorney firm with offices in New Zealand has set up an office in Sydney to provide services to Australian and international clients. Many other firms have long established relationships with Australian firms that effectively represent a permanent presence.

4.3 Presence of natural persons

Many patent attorneys based in New Zealand regularly travel internationally. In some cases it is to meet with clients who are based overseas. Such visits involve educating and advising clients on New Zealand issues.

4.4 Busting the misconceptions

These activities belie the misconception that New Zealand's services sector is low productivity, low waged and/or low skilled.⁴ It is impossible to determine if the services are low growth without the benchmarking exercise advocated above.

For further information, please contact

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⁴ Issues paper page 7