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Email: transtasmanreview@productivity.govt.nz
CONFIRMATION VIA MAIL

Your Ref:

Our Ref: TJ 502354NZ

Tim Jackson – Partner

PRODUCTIVITY COMMISSION INVESTIGATION INTO STRENGTHENING ECONOMIC RELATIONS BETWEEN AUSTRALIA AND NEW ZEALAND

Submission by Baldwins Intellectual Property and Baldwins Law Limited

We refer to our previous submission on the Issues Paper released by The Productivity Commissions of Australia and New Zealand entitled "Strengthening economic relations between Australia and New Zealand" dated 31 May 2012.

Following a review of the submissions made on the Issues Paper, the Commissions have released a draft Joint Study - Discussion Paper.

Our comments on the draft Joint Study - Discussion Paper are as follows:

Submission by New Zealand Institute of Patent Attorneys Inc. ("NZIPA")

We have read the 17 October 2012 NZIPA submissions and endorse those.

Q4.1 Would a single application process affect the rate of patent filing in New Zealand and Australia?

From the information provided by the NZIPA it is clear that there is very likely to be a significant increase in the number of patent applications filed into New Zealand. The same cannot be said for Australia as the rationale for filing into Australia changes little.

Further, in our submission, a single application process for New Zealand and Australia would also be unlikely to change the number of patent applications filed from New Zealand into Australia. New Zealand users of the patent system already have access to the Australian patent system (and vice versa) and New Zealand registered patent attorneys can operate directly with IPAustralia. Fees charged for use of IPAustralia services continue to increase, for services for which IPONZ does not make a charge. There are significant differences in the intellectual property laws between New Zealand and Australia. Patent rights available in Australia are not available in New Zealand (e.g. methods of medical treatment; extensions of patent term). The costs to New Zealand users are unlikely to significantly reduce. There is little additional incentive for New Zealanders to use the patent system. It is in fact debatable whether the first of the Single Economic Market Principles: "Persons in Australia or New Zealand should not have to engage in the same process or provide the same information twice" is applicable.

Collateral implications also need to be considered from a productivity perspective. The NZIPA has correctly addressed issues relating to freedom to operate in New Zealand and the impact that could have on the New Zealand business environment as a result of increased numbers of patents filed into New Zealand. Those same issues will not affect Australia to the same extent. The single filing and application process will not deliver any business advantage to New Zealanders in terms of technology transfer or increased investment that will balance the restrictions placed on the New Zealand business environment.

We also refer, again, to the conclusions of the Sapere Research Group into Trans-Tasman harmonisation of intellectual property law regimes that were commissioned by the MED. The conclusions drawn do not support the adoption of a single patent filing and application process.

Yours faithfully
Baldwins Intellectual Property / Baldwins Law Limited

Tim Jackson
Partner / Director