



“... creating your IP solutions”

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Attention: Mark Patterson

The Secretariat
Reviewing Panel of the National Innovation System
Department of Innovation, Industry, Science and Research
GPO Box 9839 Canberra 2601

Dear Sir,

Re: Submissions for the Review of the National Innovation System

Thank you for permitting me to make a submission out of time. I have attached a CD containing a copy of my paper in pdf format.

The case of *Stack v Brisbane City Council* commenced effectively on 14 April 1994, when the patentee of an invention known as a ‘water meter assembly’ (WMA) sought injunctive relief against the Brisbane City Council and its successful tenderer to stop those parties from using the invention in Brisbane without the patentee’s permission. A decision in 1995 by the late Cooper J determined that the BCC was an instrument of the State, so that it could take advantage of the Crown Use provisions in Chapter 17 of the *Patents Act 1990*.

The essence of the case and its relevance to the Reviewing Panel is its impact on innovation by creating uncertainty of the effectiveness of patent rights. An invention which was held by the Trial Judge to resist all challenges to its novelty, inventive step and technical compliances, was invalid because two inventors chose to put the invention in one name instead of two. As simple as that sounds, it was held that in the absence of a grant to all inventors, in that case two, one of two inventors was not entitled to the grant under s 15(1)(a) of the *Patents Act*. Section 15 sets out the people who may be granted patents and sub-para (a) refers to “the inventor”. As such one of two inventors did not come within that phrase.

The decision was upheld on appeal to the Full Court. Where does that leave us? If a patent is invalid because one of two were not named, then two of three or one of ten not named will suffer the same fate. It follows that collaborative research teams which have large number of persons contributing to the inventive solution are at the mercy of this technicality. It seems from a further case of *Conor Medsystems*, also considered in the paper, that the same result applies if someone is added to the patent as inventor who has not made an inventive contribution.

The litmus which confirmed that we have a problem, is that the US amended its laws in 1952 and the UK in 1977, to address this inequity and disincentive to innovation.

Yours truly
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