

Submission on Intellectual Property Laws Amendment (Productivity Commission Response Part 2 and Other Measures) Bill 2019

By John Gibbs, Intellectual Property Law Lecturer (Monash University), Legal Practitioner, and Registered Patent Attorney. My academic field of interest is the relationship between patent protection and economic prosperity. Opinions expressed in this paper are my own, and do not reflect the views of any employer or organisation to which I belong.

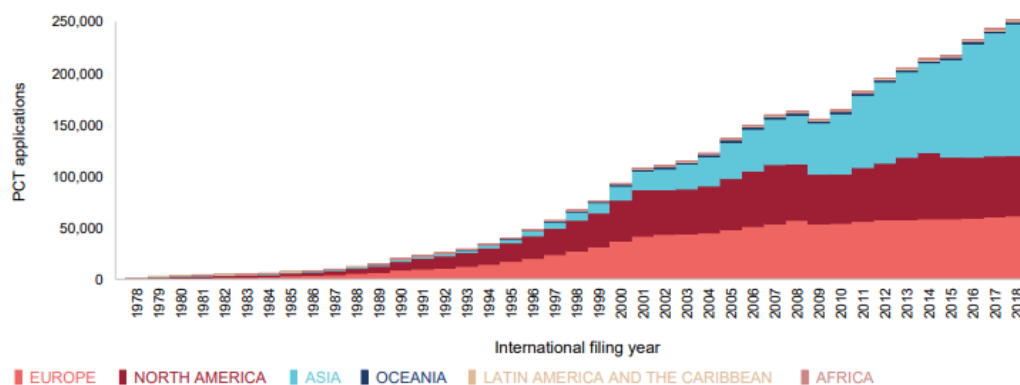
This submission explains by reference to new statistical information which has not been considered by the Productivity Commission why it would be harmful to Australia's economic interests to abolish the innovation patent.

Proposition 1: The future prosperity of a country depends not on innovation, but on ownership and control of innovation

In other words, a country benefits when citizens of that country own the intellectual property in wealth-producing innovations, but does not benefit when its citizens do not own the intellectual property in wealth-producing innovations, either because citizens of another country own it or because they did not seek intellectual property protection.

China recognised this some time ago, and has taken active steps to maximise ownership of intellectual property by its citizens. The following chart shows how Asia has over the past 20 years become the dominant owner of international (PCT) patent applications.

S3. Trends in filings of PCT applications by region, 1978–2018



Source: WIPO Statistics Database, March 2019.

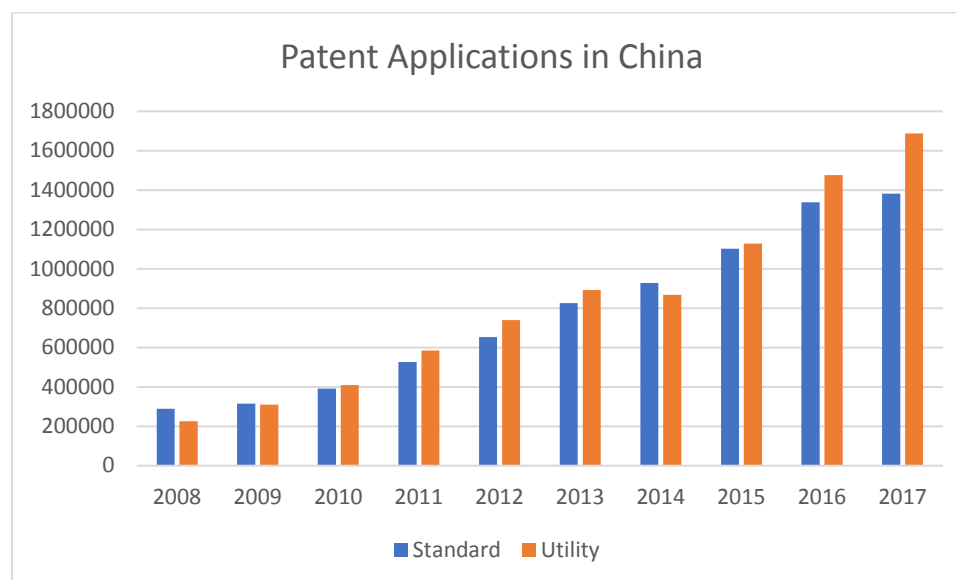
The following chart shows the number of international patent applications filed by each of the top 10 international patent applicants in 2018, grouped by country. Chinese companies dominate, with Huawei having filed almost twice as many international applications as the second highest applicant.



Proposition 2: China's dominance in intellectual property ownership has arisen as a result of carefully designed policies, including second-tier intellectual property protection for innovations

Almost every country in the world offers patents equivalent to Australian standard patents. These are expensive and take a long time to obtain, and last for up to 20 years. Some countries including China and Australia offer a second tier of patent protection, known as utility patents in China and innovation patents in Australia. Second tier patents are cheap and quick to obtain, and last for up to 8 to 10 years.

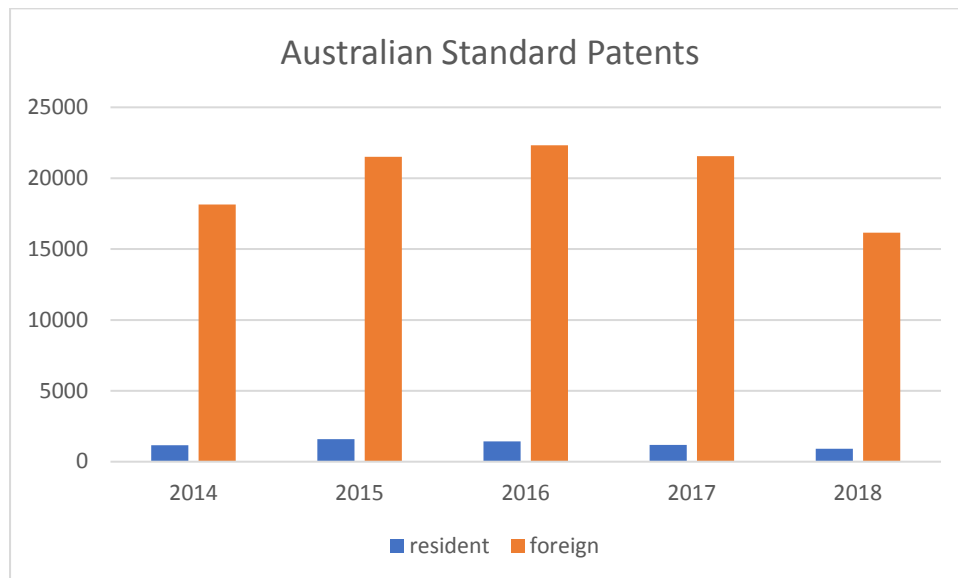
Second tier patent protection favours local applicants, as foreign applicants overwhelmingly use the standard patents system because that is what they are familiar with.



Source: https://www.wipo.int/ipstats/en/statistics/country_profile/profile.jsp?code=CN

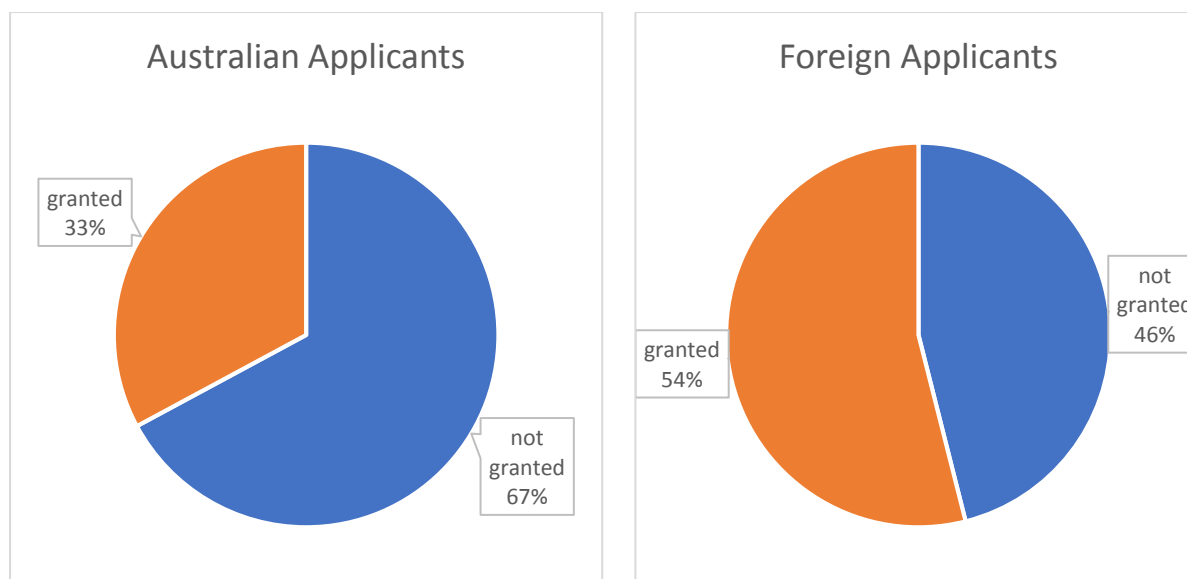
Proposition 3: Australia's standard patent system overwhelmingly favours foreign applicants

The following chart shows the number of standard patents granted in Australia each year to Australian residents, compared with the number granted to foreign applicants. In each year between 93% and 95% of patent grants have been to foreign applicants.



Source: <https://www.ipaustralia.gov.au/ip-report-2018/patents>

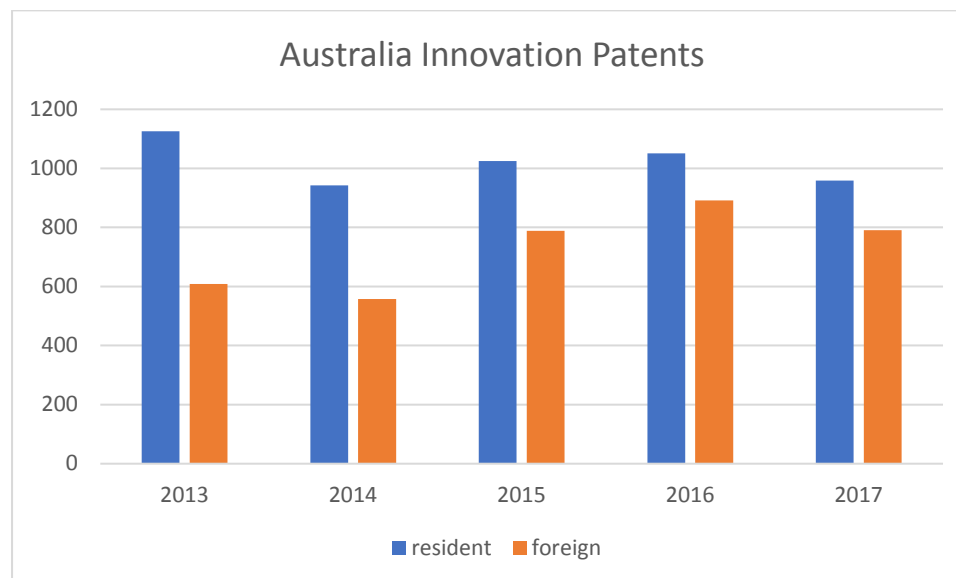
The following charts show that the number of standard patents granted to Australian applicants in 2018 was less than one third of the number of applications made by Australian applicants, whereas the number of standard patents granted to foreign applicants was 54% of the number of applications filed. Standard patent applications filed by foreign applicants in Australia have consistently, year after year, had a success rate more than 50% higher than standard applications filed by Australian applicants.



Source: <https://www.ipaustralia.gov.au/ip-report-2018/patents>

Proposition 4: Australia's innovation patent system favours Australian applicants

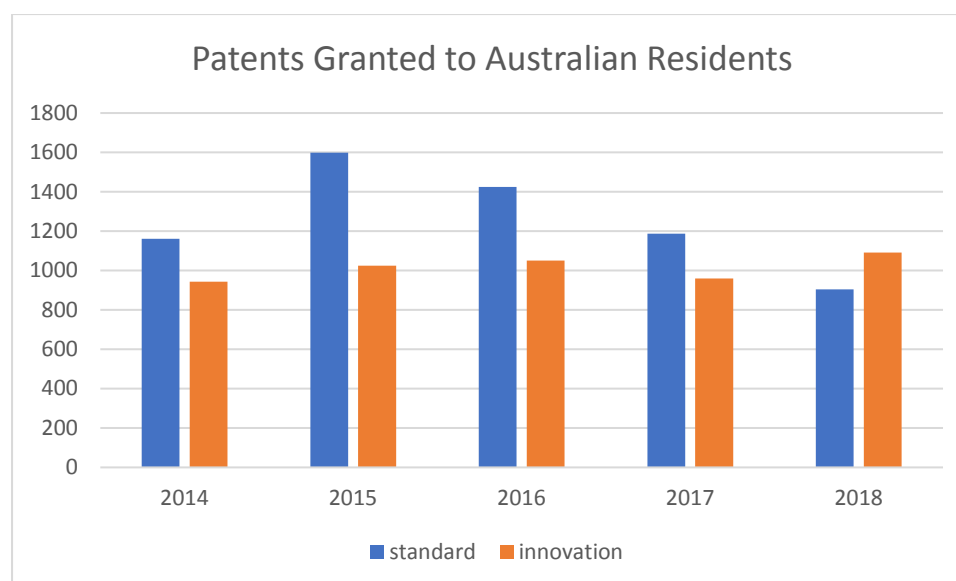
The following chart shows the number of innovation patents granted in Australia each year to Australian residents, compared with the number granted to foreign applicants. In each year the majority of innovation patents have been granted to Australian applicants.



Source: <https://data.gov.au/dataset/intellectual-property-government-open-live-data>

Proposition 5: If Australia's innovation patent system were to be abolished, almost half of the patents granted to Australian applicants would be abolished

The following chart shows the number of standard and innovation patents granted to Australian residents over the past five years.



Sources: <https://www.ipaustralia.gov.au/ip-report-2018/patents> and <https://data.gov.au/dataset/intellectual-property-government-open-live-data> (figure for 2018 is estimated as the government open live data is not up to date)

Proposition 6: It would be a backward step to make changes which result in higher costs and slower service for Australian applicants.

The cost of a granted innovation patent (\$180) is less than one sixth of the minimum cost of a standard patent (\$1110). An innovation patent is granted on average within 23 days, one sixtieth of the average time to grant of a standard patent, which is 1,376 days.

Source: <https://data.gov.au/dataset/intellectual-property-government-open-live-data>