Senate Standing Committee on Economics
ANSWERS TO QUESTIONS ON NOTICE
Innovation, Industry, Science and Research Portfolio
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AGENCY/DEPARTMENT: IP AUSTRALIA

TOPIC: Rejected IP Patents

REFERENCE: Question on Notice – Senator Cormann (Hansard, 1 June 2009, E56)

QUESTION No.: BI-60

Senator CORMANN—Do you know how many patents IP Australia rejected in the past year overall across the board?
Ms Beattie—Again, it is difficult to identify what you mean by 'rejected'.
Senator CORMANN—If somebody submits an application and you say, 'No, it doesn't fit within the criteria' or 'We don't approve. We don't grant the patent.' Does that happen at all?
Ms Beattie—Maybe I can explain to you the process.
Senator CORMANN—Perhaps you can.
Ms Beattie—What generally happens is that an applicant will file a patent application. It will be examined. When the first report is issued, if the report raises objections then the applicant has 21 months in which to get the application in order for acceptance. Some applicants choose not to respond. Therefore, the application technically lapses. Some will respond by making amendments to the patent application and therefore move on to grant if all the objections are overcome.
Senator CORMANN—Let me rephrase the question. I gather that you will have to take it on notice. Out of all of the patent applications made, both generally and then specifically for patents over biological material, how many of the patents lodged are ultimately successful and how many are ultimately either not proceeded with or not accepted? That is the sort of data I am looking for. Is that something that you would be able to provide us with?
Ms Beattie—I can give you the number of applications filed that might claim an isolated human gene sequence for which an industrial use has been identified. I can give you numbers in terms of grants, so that should then identify how many have not gone to—
Senator CORMANN—I am interested in the numbers for general patents or the total number of patent
applications vis-a-vis patent applications over biological material. We would like to have that comparison.
Ms Beattie—I will just clarify. Biological material is a very broad classification. I am assuming that you would like those that might claim a human gene sequence?
Senator CORMANN—Yes.

ANSWER

The following table lists the number of applications filed and granted which might claim an isolated human gene sequence[1] for which an industrial use has been identified in the period 1990 to 2008.

1990 - 2008	Applications which may claim an isolated human gene sequence
Filed	750
Granted	363

Details of the number of applications filed and granted for all technologies for the period 1990 to 2008 are available off IP Australia's website under the 'About Us- IP Statistics' page.

[1] The joint IP Australia and Department of Innovation, Industry, Science and Research submission to the Senate Inquiry into Gene Patents contains an explanation of the International Patent Classification (IPC) system, including how it applies to applications pertaining to gene patents at page 25. Before 1990 all patents relating to genetic engineering and DNA or RNA sequences were classified into a single generic IPC mark. Since then more subgroups have been created to allow for a further break-down of biotechnology-related patents. Data obtained by IP Australia provided here relates to the patent applications filed with an IPC mark C12N 15/12 to 15/28. These IPC marks are most likely to contain applications that claim an isolated human gene sequence per se for which an industrial use has been identified, including derivatives of the sequence such as probes and primers, and their use in diagnostic or therapeutic methods.