

**Senate Economics Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
Industry, Innovation, Science, Research and Tertiary Education Portfolio  
Budget Estimates May 2012  
28 and 29 May 2012

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**AGENCY/DEPARTMENT:** IP AUSTRALIA

**TOPIC:** Evergreening & Venlafaxine

**REFERENCE:** Written Question - Senator Heffernan

**QUESTION No.:** BI-105

Two important evergreening patents have been invalidated, one only a few weeks ago when the High Court of Australia refused leave to appeal over a second evergreening patent for the drug **venlafaxine**. The trade mark of this drug is **EFEXOR**:

1. Is IP Australia working with Dept of Health and Ageing (PBS) to assist and recover the \$79 million from Pfizer? And if so what steps and if not why not?
2. Does IP Australia plan on trying to recover the \$198 million that has overpaid Pfizer as a result of the evergreening patent which apparently extended the period of patent protection illegally for over 3 years? If yes, what is planning on doing and when and if not why not?

**ANSWER**

1 and 2. No.

The 2012-13 Budget provides the Department of Health and Ageing (DoHA) with funding to seek compensation in circumstances where a patent owner has obtained an interlocutory injunction to prevent generic products from being listed on the Pharmaceutical Benefit Scheme (PBS) and entering the market, and the patent has subsequently been found invalid. IP Australia does not have a direct role in this process as DoHA has responsibility for PBS matters. However DoHA does liaise with other agencies, including IP Australia, as required.