



NICOLLE FLINT MP

Federal Member for Boothby

The Hon Karen Andrews MP
Minister for Industry, Science and Technology
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Ref: 12001ZB

Dear Minister

I write on behalf of Schumann Rafizadeh, Director of local Boothby business One World LED, who has raised concerns regarding the protection of Australian intellectual property overseas and proposed further legislation in this space.

One World LED is a South Australian business, which develops and manufactures LED technologies. Through their global supply chain, they are able to patent new technologies in Australia and manufacture and distribute these products globally.

Mr Rafizadeh is concerned that Australian innovation and investment is hindered by patent laws, which cause companies to file patent infringement lawsuits in the home country of an offending business. To rectify this situation Mr Rafizadeh has proposed the Australian Innovation Protection Bill.

Please find enclosed, for your information and attention, a copy of the correspondence received from Mr Rafizadeh.

I would be grateful if you could please provide a response to proposal raised by Mr Rafizadeh.

Thank you for your assistance and consideration of this matter.

Yours sincerely

Nicolle Flint MP
Member for Boothby

6 / 10 / 2020

*Encl. Copy of correspondence from Mr Rafizadeh
Cc. Mr Schumann Rafizadeh, Director, One World LED Pty Ltd*



The Hon Karen Andrews MP

Minister for Industry, Science and Technology

MC20-061295

Ms Nicolle Flint MP
Member for Boothby
PO Box 570
GLENELG SA 5045

Dear Ms Flint *Nicolle*

Thank you for your letter 6 October 2020, on behalf of your constituent, Mr Schumann Rafizadeh, concerning the protection of Australian intellectual property (IP) and his proposed research and legislation.

The Australian Government recently commissioned a review into the accessibility of the Australian patent system for small and medium businesses, which is being undertaken by independent expert Emeritus Professor Raoul Mortley AO. It aims to identify any challenges that businesses like One World LED are facing when engaging with the patent system, what the Government can do to assist them, and has identified patent enforcement as an area of interest.

Mr Rafizadeh's experienced input would be valuable and I encourage him to make a submission through my department's consultation web page (consult.industry.gov.au/science-commercialisation/par/) by 31 October 2020. More information is available at www.industry.gov.au/strategies-for-the-future/patents-accessibility-review.

Another way we support Australian business is through the Australian Industry Participation National Framework, to give Australian businesses opportunities to supply goods and services to major projects. Government procurement is administered by Department of Finance under the Commonwealth Procurement Framework and requires that all potential suppliers are treated equitably, as suggested by Mr Rafizadeh.

Thank you for bringing Mr Rafizadeh's concerns to my attention.

Yours sincerely

Karen Andrews

26/10 /2020



NICOLLE FLINT MP

Federal Member for Boothby

The Hon Christian Porter MP
Attorney-General
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Ref: 12001ZB

Dear Attorney-General

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One World LED is a South Australian business, which develops and manufactures LED technologies. Through their global supply chain, they are able to patent new technologies in Australia and manufacture and distribute these products globally.

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Yours sincerely

A handwritten signature in blue ink, appearing to read 'Nicolle Flint', with a long, sweeping flourish extending to the right.

Nicolle Flint MP
Member for Boothby

6 / 10 / 2020

Encl. Copy of correspondence from Mr Rafizadeh
Cc. Mr Schumann Rafizadeh, Director, One World LED Pty Ltd

The Need for Legislation to Protect Australian Innovation

A Report to Honourable MP Ms. Nicolle Flint

By One World LED, Pty, LTD.

September 30, 2020, Updated October 1, 2020

Adelaide, South Australia



Introduction

This is One World LED's request for legislation to support the innovation in Australia.

There is an urgent need to update the legislation in a highly competitive global technology environment in order to even the playing field for Australian inventors and innovation investors competing against global hi-tech conglomerates that enjoy the support of their respective governments with updated laws.

Australia's IP laws predate the global internet and modern worldwide web technologies and innovations and are of little or no value in protecting Australian innovation and inventors in the international setting.

Following is a summary of the proposed legislation:

1. Australia Invents Act - Protect Australian Inventors and Investors.
 - A. Supporting enforcement of IP rights in Australia against conglomerates.
 - B. Supporting Investors claims in Australian courts against global infringement
2. Economic Support for Innovation in Australia - Removing Australian innovation barriers by:
 - A. Government Tenders disqualifying conglomerates that violate Australian IP
 - B. Government Tenders preference for Australian IP in the underlying products and services
3. Transparency in Government Contracts
 - A. Full transparency with Government contracts – Open access to contract information for Australian innovative companies
 - B. Prevention of costs subversion & add-ons - No allowance for hidden charges or overcharging the Australian government without a re-bid
 - C. Support of Innovation Centres - to harmonise collaboration between Government, Industry and Academia, the key Australian protagonists in innovation.

If this gap is not addressed the Australian inventors and innovative companies will continue to have no choice but to move overseas or simply surrender to Big Tech or global conglomerates.

Additionally, without adequate protection, the investors will continue to find the risks in Australian innovations unacceptable. This will make Australian government's investment in innovation subject to even larger risks and ultimately of no impact to the desired results of hi-tech job creation.

Overview

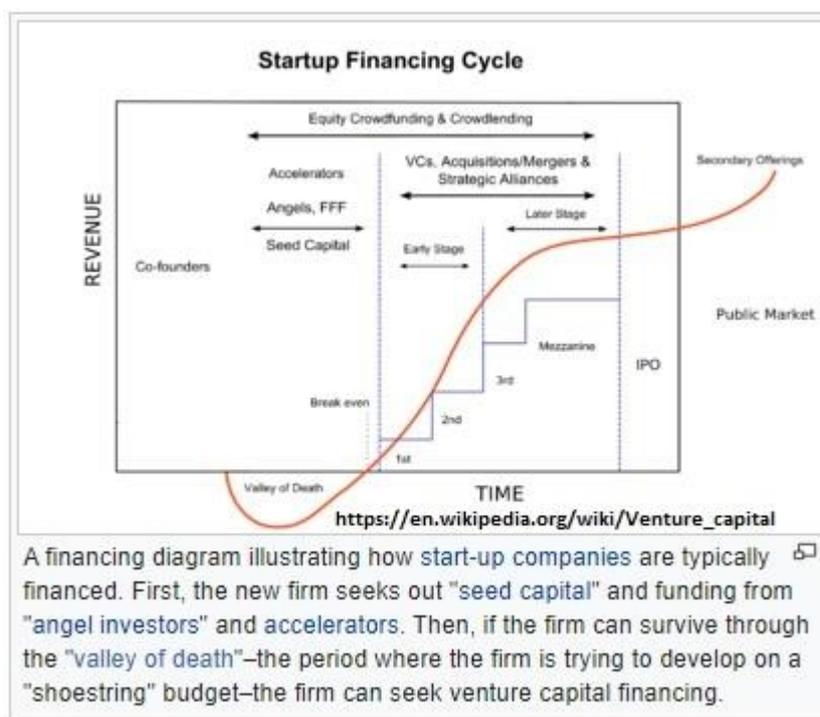
Over the past decade, One World LED in partnership with One World Technology of Suzhou and financial backing of Gem Capital in South Australia has led the development of Virtual Commerce and the large LED screens it incorporates. So far, we have received numerous patents in various countries including Australia, China and the U.S. Some of these patents have been granted under Patents Cooperation Treaty in China and United States¹.

However, we have learned that these patents formally vested with the PCT and other treaties legitimacy are absolutely worthless and unenforceable in other countries due to enactment of new national laws. This is primarily due to the updated legislation in other countries that protects host nations interests ahead of the international inventors' rights.

We need new IP laws in Australia to protect the rights of Australian inventors and investors in order to support a growing climate of innovation and entrepreneurship in our country. This will have a great positive impact on hi-tech investments and job creation in Australia.

Investment Cycle –

Following Startup Financing Diagram details the flow of funds need to establish new hi-tech industries.



This chart shows the critical role of the technology investors in success of Innovation.

¹ <https://oneworldled.com/wp-content/uploads/2019/01/LED-IP-Primer.pdf> & <https://support.adverpost.com/files/primer-20190806.pdf>

Background Facts

Details of the America Invents Act (AIA) can be accessed in the links provided below.

America Invents Act

Full Text - <https://www.congress.gov/bill/112th-congress/senate-bill/23/text>

SEC. 5. POST-GRANT REVIEW PROCEEDINGS.

(a) Inter Partes Review.—Chapter 31 of title 35, United States Code, is amended to read as follows:

“CHAPTER 31—INTER PARTES REVIEW

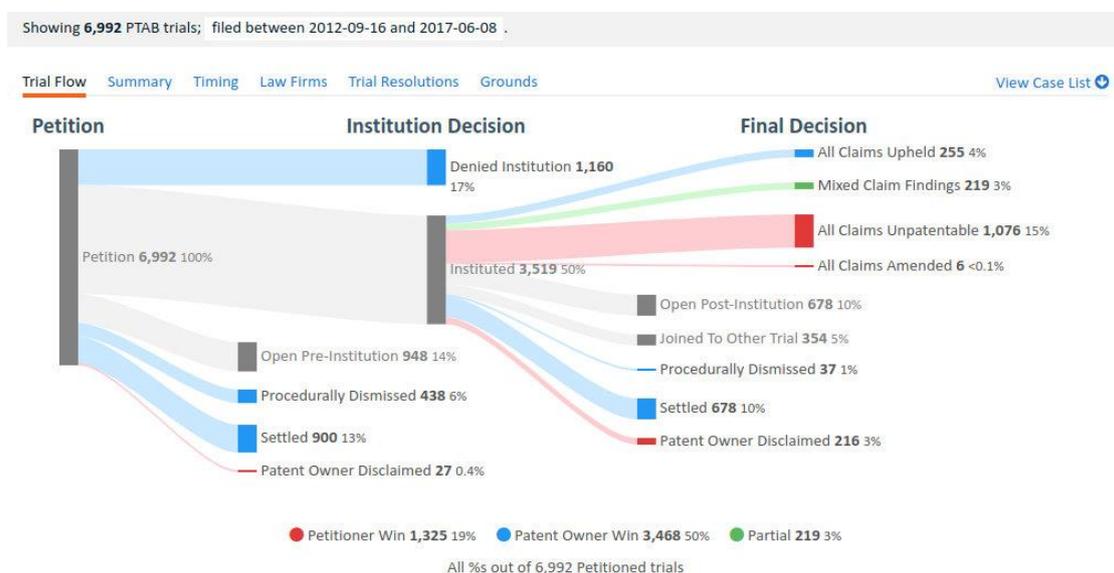
“CHAPTER 32—POST-GRANT REVIEW

Summary - <https://www.congress.gov/bill/112th-congress/senate-bill/23>

AIA and in particular Chapters 31 and 32 have provided the big tech companies in United States free access to global inventions and has stripped the global inventors such as Australian inventors from any patent protection in the environment of “America First” governance. Similarly acted laws have provided Chinese corporations with equal authority and freedom to infringe on Australian inventions.

The application of AIA to foreign inventions patents² under PCT in United States is nothing short of full wipe out. See IPWatchdog.com coverage of recent cases and the Supreme Court Ruling³ on IPRs for further details.

Over 90% of the patents filing infringement claims against big tech firms are cancelled in IPR.



This makes the need for protection of Australian inventors an urgent matter.

² <https://www.ipwatchdog.com/2017/06/14/90-percent-patents-challenged-ptab-defective/id=84343/>

³ <https://www.ipwatchdog.com/2018/04/24/industry-reaction-oil-states/id=96296/> and https://en.wikipedia.org/wiki/Oil_States_Energy_Services,_LLC_v._Greene%27s_Energy_Group,_LLC

Why Australia Innovation Protection Act?

AIA's Post-grant proceedings and IPRs provide unfair advantage to the American companies by invalidating foreign-held patents procedurally by politicians outside of the legal system. This is demonstrated by invalidation of over 90% of patents and by some estimates over 99% of patents that were infringed by the American companies. This simply has proven that PCT does not work for Australian inventors⁴.

Following is a list of Australian laws listed on IP Australia website that are expected to protect Australian inventors and investors in global hi-tech environment.

- [Patents Act 1990](#)
- [Trade Marks Act 1995](#)
- [Designs Act 2003](#)
- [Plant Breeder's Rights Act 1994](#)
- [Copyright Act 1968](#)
- [Circuit Layouts Act 1989](#)

The fact that all the laws listed predate worldwide web advances proves the inadequacy of these acts in light of AIA and similar legislation around the globe as provided here.

AIA Means Australian IP is Worthless

Following is a summary of AIA and its true intentions.

Leahy–Smith America Invents Act

From Wikipedia

The **Leahy–Smith America Invents Act (AIA)** is a [United States](#) federal statute that was passed by Congress and was signed into law by [President Barack Obama](#) on September 16, 2011.

The law represents the most significant legislative change to the [U.S. patent system](#) since the [Patent Act of 1952](#) and closely resembles previously proposed legislation in the Senate in its previous session ([Patent Reform Act of 2009](#)).

Named for its lead sponsors, Sen. [Patrick Leahy \(D-VT\)](#) and Rep. [Lamar Smith \(R-TX\)](#), the Act switches the U.S. patent system from a "[first to invent](#)" to a "[first inventor to file](#)" system, eliminates [interference proceedings](#), and develops post-grant opposition. Its central provisions went into effect on September 16, 2012 and on March 16, 2013.

This law in effect has eliminated the SME's IP rights and empowered big tech to misappropriate other countries inventions at will culminating in a U.S. Supreme Court ruling eliminating private ownership rights of patents. See <https://www.scotusblog.com/case-files/cases/oil-states-energy-services-llc-v-greenes-energy-group-llc/> for the ruling and other relevant facts including Apple's amicus Curiae brief

⁴ One World LED and GMSA have tried to enforce their patents registered in compliance with PCT (Patents Cooperation Treaty) of WIPO. See <https://www.wipo.int/pct/en/> in United States and China. Only to find out that these countries have engineered national legislation that nullify the effect of PCT and fully protect their companies against infringement claims by inventors from other countries including Australia such as AIA discussed here.

touting cancellation of all invention patents at USPTO that are used in their latest products at average cost of \$250K! This has saved Apple billions in royalty payments to inventors whose patents are now cancelled. This is the tip of the iceberg that has sunk Australian innovation and investors.

Background of AIA

Proposed Protect IP Act (PIPA) and Stop Online Piracy Act (SOPA)

The **PROTECT IP Act (Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act, or PIPA)** was a [proposed law](#) with the stated goal of giving the US government and copyright holders additional tools to curb access to "rogue websites dedicated to the sale of infringing or counterfeit goods", especially those registered outside the U.S. The bill was introduced on May 12, 2011, by Senator [Patrick Leahy](#) (D-Vt.) and 11 bipartisan co-sponsors.

The **Stop Online Piracy Act (SOPA)** was a controversial United States [bill](#) introduced by [U.S. Representative Lamar S. Smith](#) (R-TX) to expand the ability of U.S. law enforcement to combat online [copyright infringement](#) and online trafficking in [counterfeit goods](#).

According to Wikipedia, the PROTECT IP Act is a re-write of the [Combating Online Infringement and Counterfeits Act \(COICA\)](#),^[5] which failed to pass in 2010. A similar House version of the bill, the [Stop Online Piracy Act \(SOPA\)](#), was introduced on October 26, 2011.^[6]

The PROTECT IP Act has received bipartisan support in the Senate, with introduction sponsorship by [Senator Patrick Leahy \(D-VT\)](#), and, as of December 17, 2011, co-sponsorship by 40 Senators.^[20]

In the wake of online protests held on January 18, 2012, Senate Majority Leader [Harry Reid](#) announced that a vote on the bill would be postponed until issues raised about the bill were resolved.^{[7][8][9]}

The fact that PIPA and SOPA failed⁵ and only AIA was allowed to pass in United States by Big Tech is the proof of its embedded preference for their interests over other small local and global inventors and innovation companies. Note where Apple, Google, Microsoft and Amazon have enlisted for support or opposition. The lists speak for themselves. See the link in the footnote.

Conclusion

One World Led and her partners' futile and expensive efforts to enforce their valuable IP globally against infringing large hi-tech companies such as Amazon, Alibaba, Micron and eBay in countries including China and United States has generated valuable lessons for protection of Australia's future innovations.

These lessons require extensive government support to even the field for Australian inventors and investors by updated laws that reflect the reality of global hi-tech competition and procurement policies.

One World LED urgently requests our Honorable MP Ms. Nicolle Flint's support. A further study may be commissioned to review the challenges facing the Australian inventors and innovation investors as explained herein by One World LED's experience. This study can provide, A. the foundation and support for enactment of new laws to support the Australian innovation and, B. support for hi-tech job expansion and global IP protection in Australian fora for inventors and high-tech investors.

⁵ https://en.wikipedia.org/wiki/List_of_organizations_with_official_stances_on_the_SOPA_and_PIPA

We are ready, willing and able to help in any way possible to accelerate and advance this process.

Respectfully Submitted,

Schumann Rafizadeh

Director, One World LED