



SUBMISSION

TO THE

**MINISTRY OF BUSINESS, INNOVATION AND
EMPLOYMENT**

ON

**IMPLEMENTATION OF THE TRANS-PACIFIC
PARTNERSHIP INTELLECTUAL PROPERTY
CHAPTER**

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**Prepared by the New Zealand Plant Breeding and Research Association
PO Box 23143, Templeton, Christchurch**



CONSULTATION ON THE TRANS-PACIFIC PARTNERSHIP INTELLECTUAL PROPERTY CHAPTER

Introduction

The New Zealand Plant Breeding and Research Association (NZPBRA) represent plant breeders (private companies and CRIs), IP owners and managers of proprietary agricultural seed.

Our members are the major developers of pasture and arable varieties for the NZ Agriculture's pastoral and arable sectors.

The Association acts on behalf of the following organisations:

- DLF Seeds Ltd
- Cropmark Seeds Ltd
- Grasslanz Technology Ltd
- Genetic Technologies Limited
- New Zealand Agriseeds Ltd
- NZ Seed Houses Ltd
- Seed Force Ltd
- PGG Wrightson Seeds Ltd

The following submission provides specific comment [in RED] on the questions 8-10 related to:
Patent term extension for delays in patent grant.

Name and contact details

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Patent term extension for delays in patent grant

8 Do you agree with the proposals for patent term extensions for unreasonable grant delays? Why / why not?

We do not agree that a patent term extension is required.

It is a redundant system to implement in NZ. As noted in the consultation paper, under the Patents Act 2013 NZ has a prescribed period for putting the patent application in order of acceptance. Such a time limit does not exist in the US system, where a term extension may be justifiable for a heavily backlogged system.

However, it is hard to realistically imagine a similar scenario in NZ.

Interestingly, Australia has a similar prescribed period of time, yet notably has not enacted patent term extensions following signing of the Australia-US Free Trade Agreement, which included a similar clause for patent term extension.

9 Do you think that there should be a limit on the maximum length of extension available for grant delays? If so, what should it be?

A maximum period of 2 years is proposed for pharmaceutical patents. Thus, a similar length would seem appropriate, if implemented.

10 Do you consider that third parties should be able to oppose decisions to extend patents on the ground of unreasonable delays in grant?

Not enough information is given in the consultation document for this to be properly answered. The document does not outline/detail the criteria for calculating extensions.

For example, it is arguable that if a defendant is successful following a pre-grant procedure that their patent grant was delayed. However, it is unclear if the period of opposition is included in the “unreasonable delay” definition, and whether actions of the opponent are contributable to the “unreasonable delay” definition.