

**INTERSECTION OF ECONOMIC AND LEGAL FRAMEWORKS FOR OPTIMISATION OF
IPR: THE CASE OF THE EXPERIMENTAL USE EXCEPTION**

Chris Dent, IPRIA – Intellectual Property Research Institute of Australia

ABSTRACT

Amongst policy-makers and economists it is trite to say that patents are important to the national and global economies. This is why significant time is invested by academics in assessing the economic impact of the current system and in proposing ways in which the system may be improved. Many of the reforms put forward are judged against a single set of normative prescriptions – be they economic, legal or practical. That is, options are considered only in light of a restricted range of theoretical constraints.

This paper demonstrates the limitations of this approach through the consideration of a single reform proposal in terms of the multiple sets of criteria. Modifications to the patent law system of a single country should take into account two major frameworks and two, what may be seen as second order, criteria. The frameworks are economic principles and international legal obligations. The second order criteria relate to the goal of international harmonisation of patent law and the effectiveness of the reform in practice – in particular, the balancing of certainty and flexibility that is central to the operation of the law. This paper will argue that the four requirements do not necessarily produce the same result. To demonstrate, a current topic for potential reform will be used – an exemption in patent law to allow the use of patented knowledge for research purposes.