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## Recovery of Damages Under Innovation Patents

The Full Court of the Federal Court of Australia has redrawn the boundary lines for the recovery of damages for infringement of innovation patents. In *Coretell Pty Ltd v Australian Mud Co Pty Ltd* [2017] FCAFC 54 ("Coretell"), the court marks the earliest date of entitlement to relief for infringement as the date of grant. The decision overturns the previously held position, from at least 2012, that relief may be claimed back to the date of the innovation patent, which is defined as the date of its filing or, in the case of a divisional, its parent.

Innovation patents are Australia's "second tier" patents. These second tier patents have the lower requirement of an innovative step as opposed to the inventive step required for standard patents, a maximum term of eight years, and are granted following only a formalities check, but require examination and certification before they can be enforced.

Prior to *Coretell*, it had been held that relief could be claimed for infringements not only back to the date the application became open for public inspection (as is the case for standard patents), but back to the date of the patent. This had meant that a patentee could file for an innovation patent as a divisional application of a standard patent and sue for acts of infringement dating back to the filing of the parent, well before the claims of that innovation patent had been published.

The decision curtails the strategic use of innovation patents in litigation, a factor raised last year by the Australian Government's Productivity Commission in support of its recommendation to abolish the innovation patent system.

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