

IPRIA Australian Developments in IP Update May 2006

IIPRIA is engaging in an assessment of our Australian and International Developments Bulletins to ensure that they offer benefits to the many professionals who receive them. We would value your input into the process through the completion of a short survey. The questionnaire should take no more than five minutes of your time.

Please click here to access the survey: <http://www.ipria.org/survey/>

The responses to the questionnaire will remain confidential. Thank you for your time.

GENERAL IP

Intellectual Property Laws Amendment Bill 2006

On 30 March 2006, the Intellectual Property Laws Amendment Bill was introduced into the House of Representatives. The Bill amends the Patents Act 1990 to clarify prior users' rights, add a new provision to the existing compulsory licensing provisions, and allow for exemplary damages to be awarded by a court in patent infringement actions. The Bill also amends the Patents Act to implement wider springboarding arrangements that are intended to encourage companies to develop generic pharmaceuticals in Australia. The Bill amends the Trade Marks Act 1995 to simplify the processing of requests for information on trade mark files, and allow the Registrar of Trade Marks to revoke the registration of trade marks in certain circumstances. The Bill also makes a number of minor amendments to several pieces of intellectual property legislation, including clarifying the effects of the Patents, Trade Marks, Designs and Plant Breeder's Rights Offices not being open for business. Other amendments contained in the Bill are intended to facilitate administration of the Plant Breeder's Rights Act within IP Australia.

To access the Bill, click here

<http://parlinfoweb.aph.gov.au/PIWeb/Repository/Legis/Bills/Linked/30030608.pdf>

COPYRIGHT

Review of technological protection measures exceptions

On 1 March 2006, the House of Representatives Standing Committee on Legal and Constitutional Affairs released a report, 'Review of technological protection measures exceptions'. Technological protection measures (TPMs), such as passwords, are sometimes used by copyright owners to stop unauthorised copying. Australia must implement provisions in the Australia–United States Free Trade Agreement (AUSFTA) which make it an offence to circumvent TPMs unless exceptions apply. The Committee considered what exceptions should apply. A total of 37 recommendations are made in the report. These include the maintenance of exceptions currently permitted in the Copyright Act 1968, the requirement of a direct link between access control and copyright protection in the definition of TPM or 'effective technological measure', and that the Government consider ad hoc requests for exceptions to the liability scheme.

To access the report, click here

<http://www.aph.gov.au/house/committee/laca/protection/index.htm>

The Artist's Resale Rights Bill 2006 introduced into Parliament

On **27 March 2006**, Labor Senator Bob McMullan introduced into Parliament a private member's bill to amend the Copyright Act 1968, The Artist's Resale Rights Bill 2006. The Bill suggests a 4% impost for works that are resold for under \$A100,000 and 0.25% for those that are resold in excess of \$A1 million. Acknowledging that the Bill "will not pass because it does not have the Government's support," Senator McMullan believes the Bill if implemented, "would create rights which exist in almost every developed country; it would recognise and reward creativity; and it would generate a legitimate income stream for some of the poorest Australians."

To assess the Bill, click here

<http://www.bobmcmullan.com/node/100?PHPSESSID=938f9c272b32e4a650f4910c2bbdf7a6>

DOMAIN NAMES

auDA releases issue paper on domain monetisation

On 23 March 2006, .au Domain Administration Ltd (auDA) released an issues paper on the issue of domain monetisation that asked for public comment. Domain monetisation is the practice of registering large numbers of domain names for the primary purpose of capturing as much web traffic as possible to maximise advertising revenue. The question asked by the issues paper is whether it should be acceptable under the 'close and substantial connection' rule to register domain names for this primary purpose. Public comment on the issues paper was due to auDA by 21 April 2006.

For further information, click here

<http://www.ada.org.au/news-archive/news-domain-monetisation/>

TRADE MARKS

Addition of terms for trade mark e-form filing systems

On 21 April 2006, IP Australia announced that the number of terms available within the pick-list for trade mark e-form filing systems, and for the ATMOS Goods and Services help, has been increased by over 5,000 for services classes 35 to 45. The trade mark e-form filing systems, both for standard Trade Mark Applications and the Assisted Filing Service, allow the user to select from a pick-list of goods and/or services relating to their trade mark. The additional terms provide a wider range of terms for service marks than has been the case in the past for potential applicants. The list of terms available to select from was previously restricted to the Nice classification terms plus various official Office Determinations. Further work to provide additional terms in the pick-list for the goods classes (classes 1 to 34) will be undertaken in the near future.

For further information, click here

http://www.ipaustralia.gov.au/resources/news_new.shtml#16

Beating business name confusion

On 3 April 2006, it was announced that IP Australia, in conjunction with the Queensland Department of Tourism, Fair Trading and Wine Industry Development, are piloting a campaign to address the confusion surrounding business names and trade marks. Two postcards have been developed and it is anticipated 25,000 of each of the postcards will be distributed for a period of 6 months starting in April 2006. The postcards highlight the risks to a business if trade marks are not considered. The postcards' call to action is to visit an explanatory website or contact IP Australia by phone. IP Australia will look at offering the program to other states later in the year.

For further information, click here

http://www.ipaustralia.gov.au/resources/news_new.shtml#11

PATENTS**IP Australia's position paper on the search results disclosure regime provided under subsection 45(3) of the Patents Act 1990**

On 19 April 2006, IP Australia released a position paper on the search results disclosure regime provided under subsection 45(3) of the Patents Act 1990. Following reports from the Institute of Patent and Trade Mark Attorneys (IPTA) and the International Federation of Intellectual Property Attorneys (FICPI) on the difficulties practitioners were having with the regime, discussions were held in July and October 2005 regarding possible amendments to the Patents Regulations 1991 to address these concerns. Subsequently, IP Australia released a discussion paper in November 2005 to stakeholders requesting submissions. On consideration of the 16 submissions received, IP Australia has produced the position paper. IP Australia will commence seeking the necessary Regulations changes shortly, and has stated that these changes will not take effect before July 2006.

To access the position paper, click here

http://www.ipaustralia.gov.au/pdfs/news/position_paper_searchresults.pdf

PLANT BREEDER'S RIGHTS**New website on plant breeder's rights launched**

On 13 April 2006, a new website on plant breeder's rights (PBR) was launched by Bob Baldwin, Parliamentary Secretary to the Minister for Industry, Tourism and Resources. The website was developed by the Australian Centre for Intellectual Property in Agriculture (ACIPA) and the PBR Office in IP Australia. It provides comprehensive information on case law, commercialisation, enforcement and the relationship of PBR to other intellectual property rights.

To access the Understanding Plant Breeder's Rights website, click here

http://www.acipa.edu.au/frame_PBR.html