

IPRIA Australian Developments in IP

Update May 2007

Welcome to the IPRIA [Australian Developments in IP Bulletin](#) for May 2007. The following items are also available on our website. The page can be viewed in full at http://www.ipria.org/developments_in_ip/domestic/index.html

GENERAL IP

Ambush marketing legislation review

IP Australia and the Department of Communications, Information Technology and the Arts is undertaking a review of ambush marketing legislation enacted for the purposes of the Olympic Games movement and the Melbourne 2006 Commonwealth Games. The Review is being conducted by Frontier Economics and IPRIA. The Review seeks to evaluate the effectiveness and impacts of:

- Chapter 3 of the Olympic Insignia Protection Act 1987; and
- the Melbourne 2006 Commonwealth Games (Indicia and Images) Protection Act 2005.

An Issues Paper setting out the background to the review, the aims and content of the ambush marketing legislation being considered, and the types of questions for which submissions are requested is electronically available. Public submissions closed **13 April 2007**.

For more information, click here

http://www.ipaustralia.gov.au/resources/news_new.shtml#20

Comment regarding acceptance by Australia of Protocol Amending TRIPS Agreement

The Department of Foreign Affairs and Trade (DFAT) recently sought views on acceptance by Australia of the Protocol Amending the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). The proposed amendment is to allow WTO Members with insufficient manufacturing capacity to import patented pharmaceuticals made under compulsory license in certain circumstances. Acceptance of the Protocol by Australia would not require any change to Australia's patent laws. Comments were due to DFAT by **16 March 2007**.

For more information, click here

http://www.dfat.gov.au/ip/pdf/protocol_amending_trips_agreement_au_consideration_0207.pdf

Government response to ACIP recommendations regarding jurisdiction of the Federal Magistrates Service

On **5 April 2007**, the Minister for Industry, Tourism and Resources, Ian Macfarlane, announced that the Government has agreed to extend the jurisdiction of the Federal Magistrates Court to hear trade mark and design matters. At this time the extension will not cover patent and plant breeder's rights matters. The Government also accepted the recommendation that a decision made by a Federal Court Judge or a Federal Magistrate, on a request by either party to a dispute to transfer a matter to

another court, should not be able to be appealed. The Government's response is to the Advisory Council on Intellectual Property (ACIP) report, 'Should the jurisdiction of the Federal Magistrates Service be extended to include patent, trade mark and design matters?'

To see the Government's full response, click here

<http://www.ipaustralia.gov.au/pdfs/news/Brief%20Release%20Gov%20response%20ACIP%20FMS%20.pdf>

Fee changes at IP Australia

Following the introduction of the Intellectual Property Legislation (Fees) Amendment Regulations 2006, IP Australia announced that new charges commenced from **1 March 2007**. They apply mainly across patent and trade mark transactions but some non-cost recovery changes also apply to designs and plant breeder's rights. The amendments arise from a recent review of IP Australia's fees as part of its Cost Recovery Impact Statement, in compliance with the Government's cost recovery policy.

For more information, click here

http://www.ipaustralia.gov.au/resources/fee_changes.shtml

Intellectual Property Laws Amendment Regulations 2007

The Federal Executive Council recently made the Intellectual Property Legislation Amendment Regulations 2007 (No. 1). The regulations are required as a result of the Intellectual Property Laws Amendment Act 2006 and the Trade Marks Amendment Act 2006. They also reflect changes to international arrangements and a wide-ranging review of the trade marks system. Generally, the amendments have effect from **27 March 2007**.

For more information, click here

http://www.ipaustralia.gov.au/resources/news_new.shtml#19

COPYRIGHT

Australia joins WIPO Internet Treaties

Attorney-General Philip Ruddock announced that Australia marked World Intellectual Property Day (**26 April 2007**) by joining two international treaties aimed at protecting copyright and related rights on the Internet. The Attorney-General said the World Intellectual Property Organisation (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty, otherwise known as the WIPO Internet Treaties, would be acceded to in Geneva. The main feature of the treaties is the protection of copyright works, sound recordings and performances fixed in sound recordings within an online environment. The treaties were adopted at a WIPO diplomatic conference in 1996, at which Australia played an active role. Australia was one of the first countries to implement the treaties with the Digital Agenda reforms to the Copyright Act in 2000.

For more information, click here

<http://www.ag.gov.au/agd/WWW/MinisterRuddockHome.nsf/AllDocs/E8AC29AB4FF5A19FCA2572C9000F9A17?OpenDocument>

PATENTS

United States and Australia to extend cooperation on patent search and examination services

The U.S. Patent and Trademark Office (USPTO) and IP Australia recently agreed to extend a project under which IP Australia provides search and examination services on international patent applications filed with the USPTO under provisions of the Patent Cooperation Treaty (PCT). This agreement is a continuation of the project launched between the two offices in 2005. The extension commenced on **1 March 2007** and will run for 12 months. In this phase of the project, IP Australia will process up to 1,200 PCT applications over the course of the year, covering a range of technologies. The USPTO will continue to review IP Australia's work to ensure that it meets USPTO standards. Cooperation with IP Australia will allow the USPTO to dedicate more resources to examining the over 800,000 U.S. national applications currently in the pipeline, with the goal of increasing productivity and enhancing quality.

For more information, click here

http://www.ipaustralia.gov.au/resources/news_new.shtml#9

Extension of time to make submissions for ACIP review of post-grant patent enforcement strategies

ACIP advises that the submissions date for its review of post-grant patent enforcement strategies has been extended to **15 May 2007**. The review is in response to the request by Federal Industry Parliamentary Secretary, Bob Baldwin, that ACIP inquire into, and report, on issues relating to post-grant patent enforcement strategies. The purpose of the review is to benefit the Australian economy by assisting patentees to effectively enforce their patent rights. The review will focus on strategies that may assist individuals and small to medium enterprises enforce their patents in a cost effective way.

For more information, click here

http://www.ipaustralia.gov.au/resources/news_new.shtml#28

Changes to PCT Regulations

Amendments to the Regulations under the Patent Cooperation Treaty (PCT) came into force on **1 April 2007**. The more significant amendments address the following situations:

- where a PCT application is filed with missing elements or parts;
- the restoration of priority where an international application is filed up to two months after the end of the twelve month priority period;
- the rectification of obvious mistakes;
- the addition of Korean patent documents to the minimum documentation to be searched; and
- a change regarding the size of text in international applications.

For more information, click here

<http://www.ipaustralia.gov.au/pdfs/news/MDB-OLS%202007-03-29%20Official%20Notice%20for%20PCT%20Rule%20changes.pdf>

PLANT BREEDER'S RIGHTS

Inquiry into extending the duration of plant breeder's rights protection

The Plant Breeder's Rights Advisory Committee (PBRAC) is developing an assessment framework to use when making decisions on whether to extend the duration of plant breeder's rights protection. The PBRAC has released an Issues Paper that sets out the background and raises questions to which the PBRAC is seeking answers. Submissions close Friday **8 June 2007**.

For more information, click here

http://www.ipaustralia.gov.au/resources/news_new.shtml#34

TRADE MARKS AND OTHER INDICATIONS

Proclamation of Part 2 of Schedule 1 to the Trade Marks Amendment Act 2006

The commencement date of Part 2 of Schedule 1 to the Trade Marks Amendment Act 2006 was fixed, by Proclamation, to **27 March 2007**.

For more information, click here

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

For the text of Schedule 1 of the Trade Marks Amendment Act 2006, click here

http://www.austlii.edu.au/au/legis/cth/num_act/tmaa20061142006228/sch1.html

Confidential material served in trade mark oppositions

The Registrar of Trade Marks is aware that there is uncertainty in the minds of unrepresented parties, and some degree of uncertainty in the profession, about the proper treatment of material served either on a party to a trade mark opposition or on their legal representative. Accordingly, in relation to all oppositions commenced after **29 March 2007**, the Registrar proposes to direct that access to information served in opposition proceedings and properly identified as confidential is restricted to those persons who reasonably need to see it for the purposes of the opposition. Such information must be treated as confidential and may be used by the served party only in relation to the conduct of, or the giving of advice in relation to, the proceeding. The proposed direction does not affect the regime that applies to material filed at IP Australia by the same parties. Public access to such material remains subject to the controls of the Trade Mark Regulations (as amended) and the Freedom of Information Act.

For more information, click here

<http://www.ipaustralia.gov.au/pdfs/news/MDB-OLS%20Confidential%20material%20served%20in%20TM%20oppositions.pdf>

Proposed 'Australian Grown' label

On **7 March 2007**, the Parliamentary Secretary to the Minister for Industry, Tourism and Resources, Bob Baldwin, announced a proposed extension of the 'Australian Made' label to identify produce grown in Australia. Mr Baldwin stated: "An application to extend the rules for the 'Australian Made' logo has been submitted to the ACCC. If it is successful, the 'Australian Made' logo will be able to be used with Australian grown produce as well as Australian manufactured products. This will

assist consumers to differentiate between local and imported produce and allow them to make relative judgements about the freshness or suitability of what they are buying.” Under the proposed changes, the ‘Australian Grown’ logo can be used where all the significant ingredients have been grown in Australia and all the production processes occurred in Australia. It could also be used on products with a high proportion of Australian content to highlight those ingredients that are 100 per cent Australian grown.

For more information, click here

<http://www.minister.industry.gov.au/index.cfm?event=object.showContent&objectID=2ADC507E-C21D-934E-BA47CFC9FE5D9866>

DOMAIN NAMES

auDA conducts online policy survey

The Names Policy Panel of the au Domain Administration Ltd (auDA) is currently considering changes to .au policy, including:

- allowing direct registrations in .au (e.g. name.au);
- changes to .au eligibility and allocation policy rules; and
- allowing registrants to sell their .au domain names.

As part of the review process, auDA announced on **29 March 2007** that it has commissioned Nexus Research to conduct an online survey of .au registrants and Internet users.

For more information, click here

<http://www.auda.org.au/news-archive/auda-29032007/>

RESEARCH AND DEVELOPMENT

Innovation and R&D boosted in Industry Statement

On **1 May 2007**, the Parliamentary Secretary to the Minister for Industry, Tourism and Resources, Bob Baldwin, announced the release of the Government’s Industry Statement. Mr Baldwin noted that research and development had been given a boost with innovative micro businesses and public research spin-offs targeted by a new streamlined grants program under the Government’s business innovation scheme, Commercial Ready. The program will provide dollar-for-dollar support of up to \$250,000 to fund R&D, proof of concept and early stage commercialisation.

For more information, click here

<http://www.minister.industry.gov.au/index.cfm?event=object.showContent&objectID=4F20168D-971A-6564-BB3D4393803D0A47>

PROFESSIONAL STANDARDS BOARD FOR PATENT AND TRADE MARK ATTORNEYS

Position Papers on changes to patent and trade mark attorney regimes

On **23 April 2007**, IP Australia issued two Position Papers regarding the Discipline Regime for Patent and Trade Mark Attorneys and the Regulatory Regime for Patent

and Trade Mark Attorneys. In October 2005 the Government issued its responses to two reviews of the Regimes produced by the Professional Standards Board for Patent and Trade Marks Attorneys. In September 2006 IP Australia sought comments on how it proposed to implement the Government's responses. Following consideration of the comments received, IP Australia has decided that changes to the patents and trade marks regulations are needed and it will advise stakeholders when these changes occur. How IP Australia will implement the Government responses are set out in the two Position Papers.

For more information, click here

http://www.ipaustralia.gov.au/resources/news_new.shtml#31