

IPRIA Australian Developments in IP Update December 2008

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Introduction of resale royalty rights for visual artists

On 3 October 2008, the Federal Government announced that legislation will be introduced into Parliament this year to implement a resale royalty scheme for Australian visual artists by **1 July 2009**. The scheme will cover original works of graphic or plastic art, such as a painting, a sculpture, or a photograph. Under the scheme, artists will receive a royalty payment of 5 per cent of the sale price each time their work is resold for \$1,000 or more after the scheme takes effect. In line with current copyright arrangements for other creators, the resale royalty right will apply to works by living artists and will subsist for a period of 70 years after an artist's death, with the right being passed on to an artist's beneficiaries. Through international reciprocity arrangements, the right will also apply to resales of works in other jurisdictions with a resale royalty scheme, including in the European Union.

For more information, click here:

http://www.arts.gov.au/artists/resale_royalty

PATENTS

Senate inquiry into gene patents

The Senate Community Affairs Committee is conducting an inquiry into the impact of the granting of patents in Australia over human and microbial genes and non-coding sequences, proteins, and their derivatives, with particular reference to:

- the impact of granting patent monopolies over such materials on a number of areas including the provision and costs of healthcare, and the progress in medical research;
- identifying measures that would ameliorate any adverse impacts arising from the granting of patent monopolies over such materials, including possible amendments to the *Patents Act 1990*; and
- whether the *Patents Act 1990* should be amended so as to expressly prohibit the grant of patent monopolies over the above-mentioned materials.

The closing date for submissions to the inquiry is **19 March 2009**, with the Committee's report due by the last sitting day of 2009.

For more information, click here:

http://www.aph.gov.au/Senate/Committee/clac_ctte/gene_patents/tor.htm

International patent search arrangement between IP Australia and United States Patent and Trademark Office (USPTO) commences

On 9 October 2008, it was announced that the above arrangement was signed, designating IP Australia as an international search and examination authority for

certain international patent applications filed with the USPTO. The arrangement, effective from **1 November 2008**, will allow applicants from the US to choose IP Australia to undertake the initial search and examination of their patent application under the Patent Cooperation Treaty. IP Australia is also an international search and examination authority for 17 other countries including the Republic of Korea, New Zealand, Singapore, and India.

For more information, click here:

http://www.ipaustralia.gov.au/resources/news_new.shtml#51

TRADE MARKS AND OTHER INDICATIONS

IP Australia to change trade mark and design certificates

On **11 November 2008**, IP Australia announced changes to the format of certificates for trade marks and designs, effective from early November 2008 and early 2009, respectively. The changes are being undertaken to 'improve the quality' of the certificates and will allow for the colour representation of a mark. Endorsements will be provided as required.

For more information, click here:

http://www.ipaustralia.gov.au/resources/news_new.shtml#55

RESEARCH AND FUNDING

Report on research issues in Australian universities tabled

The House of Representatives Standing Committee on Industry, Science and Innovation has completed its inquiry into research training and research workforce issues in Australian universities. The associated report, 'Building Australia's Research Capacity,' was tabled on **1 December 2008** and highlights three key issues:

- the importance of primary and secondary education, particularly in the fields of maths and sciences, to prepare potential researchers for further education at the tertiary level;
- the need for greater collaboration between universities and research institutes, schools and industry more broadly; and
- the inadequacy of current funding for research training and research careers.

The report makes 38 recommendations aimed to address these and related issues.

To access the report, click here:

<http://www.aph.gov.au/house/committee/isi/research/report.htm>

New Cooperative Research Centres (CRC) Program Guidelines released

On **28 November 2008**, the Government released new guidelines for the CRC Program and launched the 11th CRC selection round. CRCs are cooperative endeavours between research organisations (such as universities) and research users from industry sectors to undertake long-term research and related postgraduate training. The new Guidelines were developed in response to a review of Australia's CRC Program released on 5 August 2008, and provide current CRCs and prospective applicants with an overview of the Program and the selection round requirements. A significant policy change reflected in the new Guidelines is the reinstatement of

‘public good’ (i.e. social and environmental benefits) as an objective of the Program. Applications for the 11th selection round close on 20 March 2009.

For more information, click here:

<http://minister.innovation.gov.au/Carr/Pages/NEWCRCGUIDELINESANNOUNCEMENT.aspx>

Government releases Pharmaceutical Industry Strategy Group (PISG) draft Directions Paper

In May 2008, the Government commissioned the PISG to develop a strategic plan to increase investment in pharmaceuticals research and development and manufacturing in Australia over the next decade. The PISG, which comprises industry and union leaders, has completed a draft Directions Paper that was released by the Government on **20 October 2008**. The draft Directions Paper provides an overview of the Australian and global pharmaceutical industries, a discussion of industry barriers and drivers, and recommendations to achieve a sustainable pharmaceutical industry. The PISG will provide its final report to the Government by the end of the year.

For more information and to access the draft Directions Paper, click here:

<http://www.innovation.gov.au/Industry/Pharmaceuticals/Pages/PharmaceuticalsIndustryStrategyGroup.aspx>

GENERAL IP

Upcoming IPRIA and Australian Institute of Commercialisation conference on commercialising inventions

IPRIA and the Australian Institute of Commercialisation are hosting a one-day conference in February 2009 titled ‘Commercialising Inventions - What’s the Story?’. The conference will feature results from several national surveys of inventors, including a survey of 4000 Australian inventors. The conference, targeted at senior business managers, IP lawyers, patent attorneys and policy analysts, will focus on:

- how many inventions are developed;
- how many inventions are successfully commercialised and the main characteristics of this success; and
- the value of most patents.

The conference is being held in Brisbane and Melbourne, and will feature presentations from Australian and international experts.

For more information and to register for the conference, click here:

<http://www.ipria.org/events/conf/CommInventions/default.html>

Twentieth Asia-Pacific Economic Cooperation (APEC) Ministerial Meeting

The twentieth APEC Ministerial Meeting was held on **19-20 November 2008** in Lima to discuss economic, human security, environmental, and social challenges facing the Asia-Pacific region. In a joint statement, APEC ministers expressed their support to conclude the framework for the Doha Round of World Trade Organisation trade negotiations this year. The ministers also commented on progress made in the area of intellectual property rights (IPR), including:

- implementation of the IPR Guidelines adopted under the 2005 Anti-counterfeiting and Piracy Initiative;
- ongoing international discussions on the relationship between the TRIPS Agreement and the United Nations Convention on Biological Diversity, regarding genetic resources and the protection of traditional knowledge and folklore; and
- the APEC Initiative on Patent Acquisition Procedures, including the agreement on the contents of the Survey on Examination Cooperation Practices among APEC economies.

The next APEC Ministerial Meeting will be held in Singapore in 2009.

To read the Ministers' joint statement, click here:

http://www.trademinister.gov.au/releases/2008/sc_AMM.html

Government proposes amendments to Australia's electronic transaction laws

On **10 November 2008** the Government released a consultation paper seeking public comment on whether Australia should accede to the United Nations (UN) Convention on the Use of Electronic Communications in International Contracts 2005. The Convention aims to facilitate the use of electronic communications in the formation or performance of international contracts, and updates many of the core provisions of the UN-developed 1996 Model Law on Electronic Commerce, which was the basis for the current Commonwealth, State and Territory Electronic Transactions Acts (ETAs). The consultation paper proposes amendments to the ETAs that would be required if Australia accedes to the Convention, relating to matters such as:

- requirements to give information in writing and for a contract to be in writing;
- a provision, additional to the signature provision, to safeguard against arguments between parties as to the objective reliability of a signature; and
- the need to clarify the definition of 'transaction' in the ETAs so that it includes dealings in connection with the formation and performance of a contract.

The Government is accepting submissions up until 30 January 2009.

To access the consultation paper, click here:

<http://www.ag.gov.au/ecommercereview>

Report on intellectual property crime and enforcement in Australia published

On **13 October 2008** the Australian Institute of Criminology released the above report, which deals with the nature and extent of IP crime in Australia, its organisation, social and economic impacts, and the efficacy of responses through legislation, law enforcement and criminal prosecution. The report calls for the development of 'uniform and agreed' definitions of IP crimes and the establishment of a national monitoring program involving 'intelligence-based collections' to improve monitoring and understanding of IP crime and its impact. The report also makes suggestions regarding how responses to IP crime could be improved, such as through:

- legislative amendments to clarify and expand case referral provisions that apply to the Federal Magistrates Court and the Federal Court of Australia;
- provisions that enable the Federal Magistrates Court to hear trade mark cases and criminal copyright cases, as well as civil copyright cases; and

- amendments to the *Copyright Act* 1968 to allow appeals, in copyright cases, from local or magistrates courts to district courts.

To read the report, click here:

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

Government releases report on Review of the National Innovation System

The report of the above Review, entitled 'Venturous Australia – building strength in innovation,' was released by the Government on **9 September 2008**. The Review was undertaken by an expert Panel and analysed the effectiveness of existing Government support for innovation. The Panel found that Australian innovation 'seems to have slowed or even stalled in the new millennium' and made a series of recommendations as to how the Government might address this, such as by increasing funding for publicly-funded research agencies and universities. In relation to IP, the Panel expressed concern that the apparent 'ease' with which patents are granted, particularly in relation to software and business methods, is 'very likely hampering innovation.' The Panel also expressed concerns over the 'high and rising cost' of enforcing IP rights (IPRs) and the management of IP policy as a legal issue even though it is 'most fundamentally an aspect of economic policy'. To address these concerns, the Panel recommended that:

- patent laws be reviewed 'to ensure that the inventive steps required to qualify for patents are considerable, and that the resulting patents are well defined';
- IP policy make the transition 'from a specialist policy area dominated by lawyers, to an important front of micro-economic reform'; and
- firms asserting or defending IPRs have a right to opt out of 'appellate double jeopardy', where each party to a dispute could elect not to appeal the finding of a court of first instance, except where the appellant funded the costs of both itself and its opponent.

The Government's response to the Review is due to be released by the end of the year.

To access the report and associated materials, click here:

<http://www.innovation.gov.au/innovationreview/Pages/home.aspx>

Developments regarding Australia's Trade Agreements

Update on Australia's participation in negotiations for the Anti-Counterfeiting Trade Agreement (ACTA)

Since announcing its decision to take part in negotiations for the ACTA in February 2008, the Australian Government has participated in three rounds of negotiations with major trading partners, including the United States, Canada, Japan, Singapore, the European Union, and New Zealand. ACTA's goal is to strengthen the enforcement of IP rights in response to commercial scale trade in counterfeit and pirated goods worldwide. So far, negotiations have addressed issues such as border measures, civil enforcement, and criminal enforcement. The next round of negotiations is scheduled for **15-18 December 2008** and is expected to cover matters such as general provisions, international cooperation, and internet distribution.

For more information, click here:
<http://www.dfat.gov.au/trade/acta/>

Australia to participate in Trans-Pacific Partnership Agreement (TPP)

On **20 November 2008** the Government announced Australia will participate in negotiations for the TTP, which will expand on the current Trans-Pacific Strategic Economic Partnership Agreement between Brunei Darussalam, Chile, New Zealand and Singapore. The United States and Peru will also take part in the negotiations. The current Agreement includes a chapter on IP, which seeks to provide an 'enhanced standard' of IP protection 'beyond that required under TRIPS' in areas that are of benefit to participating countries. The Government is now seeking public submissions and comments on Australia's decision to participate in the TPP negotiations.

For more information, click here:
<http://www.dfat.gov.au/trade/fta/tpp/index.html>

Seventh round of Australia-Japan FTA negotiations

'Steady progress' was made on many of the draft chapter texts at the seventh round of Australia-Japan FTA negotiations, which was held in Canberra from **27 to 31 October 2008**. Progress was also made in negotiations on the IP chapter, in which the parties reached 'substantial agreement' on a majority of provisions, and agreed on further intersessional work towards resolving remaining differences. The next round of negotiations is scheduled for February 2009 in Tokyo.

For more information, click here
http://www.dfat.gov.au/geo/japan/fta/newsletter_update/update_7.html

Australia and the Republic of Korea (ROK) agree to negotiate a free trade agreement (FTA)

Australia and the ROK engaged in preparatory talks in Seoul from **13 to 15 October 2008** for a bilateral FTA. The talks follow an agreement between the countries in August 2008 to commence FTA negotiations, and a feasibility study released in April 2008 on the merits of an Australia-ROK FTA. The feasibility study noted that the policy of both countries has been to negotiate trade agreements which are comprehensive in scope and address a wide range of areas, including IP.

For more information, click here:
http://www.trademinister.gov.au/releases/2008/sc_080.html

Twelfth round of Australia-China FTA negotiations

The twelfth round of Australia-China FTA negotiations was held in Canberra from **22 to 26 September 2008**. The parties intensified their discussions about issues relating to tariff liberalisation and engaged in two days of 'detailed discussions' relating to IP. The next round of negotiations is expected to be held in December 2008.

For more information, click here
http://www.dfat.gov.au/geo/china/fta/081003_subscriber_update.html