

AUSTRALIAN INTELLECTUAL PROPERTY JOURNAL

Volume 15, Number 3

August 2004

ARTICLES

“Flexibility” in TRIPs: Using patented inventions without the authorisation of the rights holder – *Charles Lawson*

This article reviews the permanent limitations that may be imposed on a patentee’s “exclusive rights” according to the recent developments in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs). This review illustrates that TRIPs is an evolving agreement and that there is likely to be considerable “flexibility” within the current agreement to craft domestic laws to suit the particular needs of World Trade Organisation member states. For Australia this is an opportunity to develop and apply patent and competition laws in a way that promotes Australia’s particular and different economic and technological interests. 141

An analysis of the approaches of the Trilateral and Australian Patent Offices to patenting partial DNA sequences (ESTs) – *Melanie J Howlett and Andrew F Christie*

Rapid developments in biotechnology are challenging the boundary of patent law. The scientific community, national and international organisations are concerned about the patenting of partial DNA sequences (also called expressed sequence tags (ESTs)) and the need to ensure a fair allocation of intellectual property rights. This article provides a detailed analysis of the examination practices of the European, Japanese, United States and Australian Patent Offices in relation to patenting ESTs. This analysis illustrates that the practice of the patent offices is such that the requirements for patentability of ESTs is stringent. The main concerns, that (i) offices would grant patents for ESTs with no useful function and that, (ii) patents would be granted for cDNA sequences that “comprise” the sequence of an EST and thus are so broad as to include the subsequently discovered corresponding gene, appear unfounded. 156

The EU’s geographical indications agenda and its potential impact on Australia – *Michael Handler*

The EU is currently attempting to ensure that the scope of legal protection that WTO Members must provide to geographical indications of origin is increased. The consequences of this agenda for countries that have not historically afforded European-style protection for GIs, such as Australia, are uncertain. This article critically analyses the EU’s agenda by assessing the arguments for increasing GI protection, in particular those arguments dealing with the alleged deficiencies of the present legal framework and the potential costs and benefits involved. It argues that it is not in Australia’s interests to agree to the EU’s agenda as it is unlikely to create significant trade advantages for

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Editorial inquiries:

Tel: (02) 8587 7000

HEAD OFFICE

100 Harris Street PYRMONT NSW 2009

Tel: (02) 8587 7000 Fax: (02) 8587 7100



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ISSN 1038-1635

Typeset by Lawbook Co., Pyrmont, NSW
Printed by Ligare Pty Ltd, Riverwood, NSW