

# AUSTRALIAN INTELLECTUAL PROPERTY JOURNAL

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## ARTICLES

### **A quantitative analysis of Australian intellectual property law and policy-making since federation – *Emma Caine and Andrew Christie***

There have been periodic calls for reform of the administration of intellectual property (IP) law and policy-making in Australia, and in particular for the consolidation of responsibility for IP into a single federal government department. This article contributes to the debate by analysing quantitative data on Australian IP law and policy-making since federation. It measures the growth of IP legislation and reviews of IP legislation over the past century, and compares this with the corresponding growth in another body of commercial law and in the economy. The article finds that while IP law is growing exponentially, it is growing more slowly than corporations law. Further, the growth of both bodies of law is dwarfed by the growth of the economy. It seems, therefore, that there is no clear quantitative basis for the previously expressed objections to Australian IP law and policy-making. It follows that justification for reform of the administration of Australian IP law will need to be based on qualitative concerns. .... 185

### **Does the fair basing “problem child” escape Lockwood? – *Amanda McBratney***

In an earlier article, the concept of fair basing in Australian patent law was described as a “problem child” – often unruly and unpredictable in practice, but nevertheless understandable and useful in policy terms. The article traced the development of several different branches of patent law that were swept under the nomenclature of “fair basing” in Britain in 1949. It then went on to examine the adoption of fair basis into Australian law, the modern interpretation of the requirement, and its problems. This article provides an update. After briefly recapping on the relevant historical issues, it examines the recent *Lockwood* “internal” fair basing case in the Federal and High Courts. .... 210

### **The requirement of trade mark use: Recent developments in Australia – *Robert Burrell***

The non-use provisions of the *Trade Marks Act 1995* (Cth) have attracted some attention in recent reviews of the trade marks system and some reform of these provisions now seems likely. Unfortunately, however, there has been a failure to confront the full range of problems that hamper the effectiveness of the current non-use provisions. Once these problems are properly understood, it can be seen that more wide-reaching reforms than those being canvassed at present merit serious consideration. .... 231

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5. Austin, n 4, p 56.

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