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EDITORIAL 199

ARTICLES

Speculations on the Australian right of “integrity of performership”: More questions than answers? – Elizabeth Adeney

The moral rights of performers are one of the most recent additions to the Copyright Act 1968 (Cth). In their drafting they bear great similarity to the moral rights of authors, protected by the Act for a decade now. Nevertheless, these performers’ rights raise an array of issues that were not raised by the authors’ rights provisions. This article considers the right of integrity of performership with particular attention to the nature of performership under the Act, to the ways in which performance can be “altered” so as to infringe the right, and to the duration and exercise of the integrity right. While answers can be found to some of the questions begged by the provisions, others remain more intractable. 200

“Human beings” as excluded subject matter for the purposes of the Patents Act 1990 (Cth) – Dr Charles Lawson

The purpose of this article is to review the meaning of “human beings” as it is used in the Patents Act 1990 (Cth). The analysis demonstrates that the meaning remains uncertain and that appeals to essential characters and taxonomic conceptions of “human beings” are not satisfactory. The article concludes that the existing qualitative test of what constitutes “essentially human characteristics” (that is not defeated by any technological means of how the “human being” is constituted or created), and the “unlikely to be ephemeral” standard in applying the “contrary to law” exclusion for post-patent grant exploitation limitations, are problematic. 223

Inventive step: Obvious to try again? – Andrew McRobert

In *Aktiebolaget Hässle v Alphapharm* (2002) 212 CLR 411, the High Court of Australia rejected “obvious to try” as an acceptable standard for want of inventive step. Eschewing developments in the UK, the High Court favoured the approach of the US and, in particular, various opinions of the United States Court of Appeals for the Federal Circuit (CAFC). However, in *KSR v Teleflex* 550 US 398 (2007), the United States Supreme Court held that it was improper for the CAFC to deny any role to “obvious to try” in the analysis of non-obviousness. In Australia, KSR has been described as having “overruled” or “dismissed” prior US case law on “obvious to try”. That is perhaps not the most accurate description of its effect. The purpose of this article is to clarify the status of “obvious to try” in Australia and the US and, in particular, to articulate what it was the High Court rejected when it rejected “obvious to try” in *Alphapharm*. 237

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