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EDITORIAL 3

ARTICLES

The curious case of the inventive step and innovative step provisions under the Patents Act 1990: A drafting flaw? – *Dr Geoffrey Levy*

The words "when compared with the prior art base" in the inventive step and innovative step provisions of the Patents Act 1990 (Cth) constitute a drafting flaw or, at the very least, cumbersome drafting. The presence of those words leads to a lack of clarity and difficulties of construction. It is suggested that those provisions be amended so as to remove the unnecessary words. Alternatively, once the drafting flaw is recognised, rules of statutory construction should be utilised to "read out" the unnecessary words. A corresponding amendment to the novelty provision of the Patents Act 1990, or a corresponding "reading out" of the unnecessary words in that provision, should be made so as to bring that provision into line with the inventive step and innovative step provisions. 4

Is the accessibility of information on the WWW disrupting the foundation and rationale of the patent system of disclosure in exchange for grant of a patent? – *Eliza Jane Saunders*

This article considers the reliability of information sourced through the internet and looks at how some of the major patent offices around the world use information disclosed on the World Wide Web (WWW) as a source of prior art information in the examination of patent applications. The article then considers whether the use of the WWW as a source of prior art information for patent applications, particularly the use of "defensive publishing" as an intellectual property protection strategy, is disrupting the foundation and rationale for the patent system of disclosure in return for a granted patent right. What benefit has the patent system if innovation can arguably be stimulated more quickly through disclosure on the WWW at no cost to users? It is concluded that the fundamental patent law principles of sufficiency of disclosure, as well as enabling disclosure and "ascertainment" (in the assessment of novelty and inventive step under Australian patent law), will ensure that patent law maintains a hold over innovation in today's society. 17

Reproduction and communication of internet materials by educational institutions: The need for clarity and certainty – *Dr Niloufer Selvadurai* and *Md Rizwanul Islam*

Part VB, Div 2A of the Copyright Act 1968 (Cth) creates a statutory licensing scheme for the reproduction and communication of works in electronic form by educational institutions. As material downloaded from the internet becomes an increasingly significant component of the resources provided by educational institutions, it is imperative to ensure that this statutory scheme remains effective and relevant. A proper balance needs to be maintained between providing incentives for creativity and ensuring adequate access to information. The article analyses the operation of the scheme, identifies certain areas of uncertainty and inconsistency, and considers an interesting alternative model from the law

reform discourse in Canada. 31

Domain name-trademark conflict resolution: An evaluation of UDRP – *D Shyamala*

Domain name-trademark conflicts have had a phenomenal growth in the recent past. The international feature of domain names in contrast to a strong national basis of trademarks has made conflict resolution difficult under varying national laws. As a result, an attempt has been made at the international level to resolve domain name-trademark conflicts in the form of the Uniform Domain Name Dispute Resolution Policy (UDRP). The great expectation with which the UDRP was formulated has been realised to a considerable extent, since a large number of cases are settled or being settled under the policy. However, the author presumes that the litmus test of freedom from defect has never been passed by the UDRP. This article attempts to vindicate the above premise by highlighting the relevance of the UDRP in the resolution of domain name-trademark conflicts, and by addressing the areas of concern that require the immediate attention of the legal fraternity. The author concludes that a permanent solution to domain name-trademark conflict presupposes rethinking on the national and international bases of trademarks and domain names respectively. 42