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Experimental use exemption: A necessary expansion in Australian patent law – *Rachel Bradshaw*

Patent law in Australia has evolved in a manner that has secured strong protection of patent holder rights but has decreased effective access and disclosure to researchers. In an era of rapid technological advancements it is increasingly important to ensure an appropriate balance between the rights of patent holders and the interests of the broader community. The lack of clear and defined rights for researchers has not promoted scientific research and advancement. It is argued that the introduction of an experimental use exemption to the current Australian patent law would provide a more productive environment for innovative activities and promote the public interest. Such a reform would create the ideal balance between the competing interests as it would provide commercially effective patent holder rights while maximising the opportunities to advance society. 134

VUT v Wilson, UWA v Gray and university intellectual property policies – *William van Caenegem*

In Wilson and Gray the respective university intellectual property policies were held to be ineffective. The Federal Court therefore had to examine the default law concerning academic ownership of inventions. The trial judge in Wilson accepted that inventions that were a normal incident of the kind of research a particular academic was engaged to perform may belong to the employing university. However, French J and the Full Court in Gray emphasised that academic autonomy, duty to publish and freedom to collaborate with outsiders set academics apart. Employer ownership of inventions is therefore not to be implied into standard academic employment contracts, which are of a separate kind. A duty to research does not equate to a duty to further the university's commercial interests by pursuing patentable inventions, as is by contrast required of researchers in industry. This article examines the rulings in Wilson and Gray and explores what they mean for the structure and terms of university intellectual property policies in the future. 148

Liability of directors as joint tortfeasors in intellectual property matters – *Christopher Wood*

A body of law has developed that allows applicants seeking to enforce statutory intellectual property rights to obtain a judgment against both the company and its directors in some circumstances because those directors are seen as "joint tortfeasors". The application of that doctrine, which involves borrowing a body of law from the common

law, is at odds with the idea that a company is a separate legal entity, and only acts through its directors and employees. Recently, in Keller v LED Technologies Pty Ltd (2010) 185 FCR 499; 87 IPR 1, the Full Court of the Federal Court attempted to resolve this difficulty, and resolve the myriad of different tests for liability of directors that had emerged. The Full Court gave support to a stricter test that emphasised the idea that directors will not ordinarily be individually liable where they act in good faith in the discharge of their duties to the company. However, all three members of the Full Court gave different reasons, and significant doubt remains as to the proper test, particularly in scenarios that are factually distinct from the one that the Full Court was dealing with. This article examines the history of the application of joint tortfeasorship to directors, and examines some of the problems with the application of joint tortfeasorship doctrines in this context. That review suggests an unsound jurisprudential basis for the application of the doctrine of joint tortfeasorship, and provides a proper basis for questioning whether a director should ever be liable as a "joint tortfeasor" for his or her company's infringement of statutory intellectual property rights. 164