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ARTICLES

Revisiting merits review of patent application, grant and validity decisions under the Patents Act 1990 (Cth) – *Dr Charles Lawson*

This article reviews the reports from 1935 to the present addressing administrative and judicial decision making about Patents Act 1990 (Cth) patents. In particular the article addresses the review of examination (and modified examination), opposition, re-examination and revocation (including as a cross-claim to infringement) decisions under the Act and whether the Commissioner of Patents' decisions should be subject to "merits review" by a generalist administrative tribunal. The article concludes that the role of the Federal Court in dealing with revocation as a cross-claim to infringement proceedings (exercising judicial powers) needs to be resolved. However, considerable potential to minimise the cost, complexity, timeliness, and uncertainty of outcomes of patent decisions exists in changes to the Commissioner's practices in examining patent applications and the statutory framework for reconsidering the Commissioner's decisions. 178

The origin of property rights – *Dr D J Gifford*

Why should newcomers accept the claims of existing property owners if all land once belonged to humanity in common? Private property emerged from collective rights of particular groups to a specific territory. This article sets out the views of authors from Locke to Nozick. 196

Discrimination as a ground of ultra vires: Why is Canada ahead of the rest? – *Dr D J Gifford*

The discrimination test has English origins and is closely related to invalidity for Wednesbury unreasonableness (irrationality), but its main development occurred in Canada. Canadian developments are treated at length, then comparisons are made with the case law of four other jurisdictions: England, Ireland, New Zealand and Australia.

The Australian courts began with some promising cases, but largely blocked that line of development by taking a very narrow approach to unreasonableness, especially in relation to delegated legislation. It is still possible that Australian courts will develop the discrimination doctrine in relation to administrative action. Elsewhere there is no obvious

bar to the doctrine, but the body of case law on the issue is so slight that the test may be lost sight of. Canadian authority and the climate provided by anti-discrimination legislation may prove useful. 202

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