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ARTICLES

Repeatability or reproducibility in Australian patent law – Ben McEnery

This article considers the extent to which a claimed process must be repeatable or reproducible in order to be patentable according to Australian patent law. It asks whether a process must yield identical or near-identical results each time the process is invoked, or if not, what degree of repeatability is required. The question is relevant when considering, among other things, the patentability of some methods of medical treatment and diagnosis, biotechnology inventions and business methods. 5

Re-evaluating innocent infringement in Australia: Patent numbers and virtual marking – Johnathon E Liddicoat

If products sold in Australia are marked to indicate they are patented, such marking gives notice to third parties that the products are protected by patents. In the absence of such notice, infringers may not be aware of patent rights and patentees who are successful in providing infringement may not be eligible for monetary remedies. The reason for this is that those found liable for infringement can argue that their infringing actions were done innocently, as provided in s 123 of the Patents Act 1990 (Cth) – otherwise known as innocent infringement. In a market economy that generally relies on free competition for efficient allocation of resources, patent marking signals that at least one functional aspect of a product is not open to direct competition. Analysis in this article demonstrates that current Australian provisions on effecting notice of patent rights via patent marking are contrary to patent theory and result in notice being too easily discharged. This obviates protection that should be afforded to innocent infringers and causes inefficiencies in the patent regime – particularly in the form of additional transaction costs. On this basis, amendments to the innocent infringement provision are recommended. These recommendations are based on the mechanism by which UK law demands patent numbers be included to effect notice through patent marking, and the mechanism by which “virtual marking” is explicitly permitted in the US. Such amendments will harmonise Australia’s patent law with two major trading partners, simplify international trade of patent protected products, and increase the overall efficiency of the patent system. 18

Trade mark use and misleading advertising in Google AdWords: A comparative analysis of search engine liability in Australia and Europe – James Alexander Longden

For a number of years advertisers have utilised Google’s AdWords service to select competitors’ trade marks as keywords which, upon an internet user entering a corresponding search term, trigger the display of advertisements that offer their own competing goods or services. Trade mark proprietors have run out of patience with this practice and have pursued both the advertisers and Google for misleading and deceptive conduct in Australia, and trade mark infringement in Europe. This article examines the

landmark recent decisions in both continents and finds that there is a striking similarity between the analyses conducted by Australia's and Europe's highest courts of the role played by Google in advertisers' infringing conduct. 35

CASE NOTE

Halal Certification Authority Pty Ltd v Scadilone Ltd [2014] FCA 614 49