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ARTICLES

Understanding the "safe harbour": The prohibition on engaging in legal practice and its application to patent and trade marks attorneys in Australia – *Francesca Bartlett* and *Robert Burrell*

This article looks at how the work of patent and trade marks attorneys relates to the exclusive right to engage in legal practice conferred on solicitors and barristers, taking as its starting point the proposed national legal profession reforms. It argues that more needs to be done to clarify the safe harbour that attorneys enjoy from the prohibition on engaging in legal practice and that there are good reasons for framing such a safe harbour in generous terms. 74

Accessing and affording drugs despite the patent barrier: Compulsory licensing and like arrangements? – *Charles Lawson*

This article addresses the potential of compulsory licensing and like arrangements under the *Patents Act 1990* (Cth) for pharmaceuticals that are not made available in Australia, or available at such a high price that they are effectively unavailable. The analysis shows that the existing compulsory licensing and like arrangements (the general third party non-voluntary licensing, government (Crown) use and government acquisition) appear to be credible possibilities for accessing patented pharmaceuticals, albeit there remain significant uncertainties about their deployment. The article concludes that compulsory licensing and like arrangements need to be a clear and present threat to patent holders to encourage them to voluntarily work their patents or license them (in Australia) on reasonable terms and conditions. 94

The American shop rights doctrine and the inventions of Australian employees – *Robert F Considine*

Innovative employees provide insights and creative energies that can drive corporate prosperity. However, innovative employees can soon become cunning competitors when they leave their employer. The shop right provides American employers with a restricted licence to use an employee's invention if it was reduced to practice with the employer's resources and knowledge. However, the Americans have been imprecise in defining the doctrinal basis of the shop right, with equity and fairness, equitable estoppel or implied licence having been held as valid doctrinal bases in the Supreme Court. Shop rights have not arisen in Australian cases such as *University of Western Australia v Gray* (2009) 179 FCR 346. This article analyses the doctrinal basis of the shop right, whether a pseudo shop right could be founded on existing Australian intellectual property law and, if so, the implications that would have had on selected Australian cases. 109