AUSTRALIAN INTELLECTUAL PROPERTY JOURNAL

Volume 25, Number 4

June 2015

ARTICLES

Gene-related patents in Australia and New Zealand: Taking a step back – *Jessica Lai*

In September 2014, the Full Court of the Federal Court of Australia handed down D'Arcy v Myriad Genetics Inc, holding that simply isolated genetic sequences are capable of constituting "manners of new manufacture" and are thereby inventions, as opposed to discoveries. In doing so, the court came to the opposite conclusion to the United States Supreme Court in an analogous case. Given the long-standing practice of granting gene-related patents in Australia and around the world, the outcome was by no means surprising. This article analyses if the Full Court's decision was correctly reasoned in light of the High Court of Australia's decision in National Research Development Corporation v Commissioner of Patents and the existing flexibility regarding subject matter eligibility in Australia and New Zealand. 181

Do software patents inhibit open source licensing in Australia? – *James Scheibner* and *Dianne Nicol*

Open source licences are a particular form of intellectual property licensing arrangement where the licensor allows the development and redistribution of their derivative works, provided that the licensee complies with the terms of the licence. Open source licences can be distinguished from closed source licences, where the program cannot be modified beyond its released form and distributive development is not permitted, and are an increasingly popular form of licensing arrangement for software. While open source advocates argue that the framework of copyright law supports such licences, this has never been tested in an Australian court. Furthermore, it is uncertain whether software patents could inhibit open source licensing through the creation of exclusive exploitation rights. The now-settled dispute in the United States between Twin Peaks Software and Red Hat is used in this article as a hypothetical case study to explore the interface between open source licensing and software patents in Australia. This article also considers alternative strategies that could be used to protect software under an open source licence against a case of patent infringement. 198

Swim at your own risk: Patent pools in Australia – *Richard Hoad* and *Deborah Polites*

The use of common industry standards, and resulting aggregation of essential patented technology into "patent pools", is a well-established worldwide practice, most notably in the fields of electronics, computing and telecommunications. Typically, these patent pools operate on the basis that the pooled technology will be offered to third parties on "fair, reasonable and non-discriminatory" terms. Although such arrangements have many benefits, developments in the United States and Europe have illustrated the importance of continuing scrutiny of their establishment and operation. This article considers recent developments in relation to patent pools and the possible implications for Australia, where clear direction from courts and regulators has yet to evolve. 220

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