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EDITORIAL – *General Editor: Dianne Nicol* 77

ARTICLES

Tracking for Change: A Pathway for a Future Indigenous Cultural and Intellectual Property Law – *Dr Terri Janke*

First Nations peoples have the right to control, maintain, and protect their Indigenous Cultural and Intellectual Property (ICIP). However, as government and industry increasingly draw upon Indigenous knowledge systems, misuse and misappropriation continue to be widespread. This ongoing exploitation undermines the social, cultural, and economic rights of First Nations communities. This article examines the pressing need for robust legal protection of ICIP in Australia. It outlines the significant harms caused by unauthorised use – including the loss of cultural meaning and the devaluation of authentic Indigenous cultural and artistic expressions. Dr Terri Janke explores recent progress domestically and internationally, such as the upcoming sui generis ICIP legislation in Australia. She identifies key components that this legislation should include, such as rights and exclusions, meaningful sanctions and remedies, and the creation of a National Indigenous Cultural Authority. Ultimately, the article argues that ICIP, like land and waters, is not terra nullius and must be recognised, respected, and protected. 79

Inventive Step’s Origin Story: Taking an Inventive Step ... Step by Step Part II – *Benjamin Hopper*

This is the second of a two-part article series on the origins of the inventive step doctrine in patent law. Part I set out the socio-economic and legal context in which the inventive step doctrine developed. This Part II traces the doctrine’s conception in the case law through the course of the long 19th century. It shows how, in developing an inventive step as a distinct criterion of validity, and formulating an objective approach to assessing that criterion, courts facilitated the needs of entrepreneurs seeking to profit from more incremental inventions. First, the doctrine assisted (1) in identifying the inventive contribution justifying the patent, and (2) by reducing the patentability standard from a “new art” to a non-obvious step. Second, the doctrine made more certain the validity of patents than had been the case under the prior favoured tests, which focused on the public benefit or merit of the invention. Nonetheless, traces of those latter tests linger today in the inventive step doctrine, the application of which continues to challenge lawyers and judges. 91

The Global IP Ratchet: A Few Loose Screws – *Panayiotis Xenos*

This article will critically analyse Professor Peter Drahos’ 2001 statement that intellectual property treaties only ever increase in strength and scope, with the benefit of today’s hindsight. Specifically, it will focus on the content and overall impact of both bilateral and multilateral treaties that parties such as the United States and European Union have entered

into which have included provisions on intellectual property. This article will tentatively agree that Professor Drahos' remarks remain mostly intact more than two decades later. However, it is important to recognise that the exceptions to this rule must not be so easily waved away. Rather, they act as symptoms of the transformation in the priorities and power dynamics between the stakeholders that help form these standards, four of which will be reviewed in this article. In doing so, these exceptions provide valuable insights when forecasting the state of the global intellectual property ratchet a further two decades from now. 112

VOLUME 35 – 2024–2025

Table of Authors	129
Index	131