

# Australian Intellectual Property Journal

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EDITORIAL – *Editor: David Brennan* ..... 3

## ARTICLES

### **Informed User and Familiar Person in Australian Design Law and Their Counterparts in European and US Law – *Yisheng R Chen***

Australia introduced the standard of the informed user from Europe into the *Designs Act 2003* (Cth) for assessing design distinctiveness and infringement. The informed user was originally interpreted by the court as necessarily a user of the product or products to which the design relates. In 2021, following the decision in *Multisteps Pty Ltd v Source & Sell Pty Ltd*, the standard was amended to that of the familiar person who is familiar with the related product(s) only without the need of being a user. In contrast, the European counterparts continue to treat the informed user as necessarily a user whose standard lies between an average consumer and a sectoral expert. The United States designs law however is governed by a different system. It protects designs as designs patents and uses the standards of an ordinary observer, an ordinary designer, and a modified ordinary observer to assess novelty, non-obviousness and infringement of a design patent, respectively. .... 4

### **The Growth of Knowledge Commons in Synthetic Biology: The OpenPlant Case – *Alison McLennan, Juan Diaz-Granados and Maria Gonzalez Valero***

The development of synthetic biology is characterised by two approaches to innovation, based on intellectual property rights and sharing initiatives. This article examines this tension, arguing that some parts of the synthetic biology scientific community are adopting sharing initiatives due to perceived innovation impediments caused by the patent system. Using an empirical approach, the article analyses the OpenPlant case study through the knowledge commons framework. The study identifies significant potential impediments associated with patenting in synthetic biology, as well as relevant benefits and implications that arise from the adoption of a commons model. The analysis sheds light on what drives synthetic biologists to embrace a “knowledge commons” or sharing approach and how this practice can positively impact innovation. .... 25

### **Beyond Borders: The Lack of Extra-territorial Jurisdiction and the Unenforceability of Australian Copyright Offences against Online Infringement Activities as Cross-border Crimes – *Yuqian Shang***

This article aims to examine the level of criminal enforcement against online copyright crimes in Australia in the past decade. By both qualitative and quantitative research, this article argues that the criminal law regime has only been utilised at a minimal level due to the lack of extra-territorial jurisdiction. Furthermore, this is likely to remain the case in light of the position under the major international treaties and the questionable benefit that any international co-operation could bring to Australia in this respect. .... 46

