



The GATHERER

Volume 3

*Forcing
Chinese
copycats to
take a leap*

PROTECT
your intangible assets

**Australian Intellectual
Property Report 2017**
— opportunities to drive
innovation

Amazon AU
deconstructed

EDITORIAL TEAM

REBECCA HEMBLING

Marketing & Business Development Manager
rebecca.hembling@wrays.com.au

KATE FISHER

Marketing & Business Development Consultant
kate.fisher@wrays.com.au

LOUISA TAYLOR-BOND

Graphic Designer, Reflect Design
louisa@reflectdesign.com.au

CONTRIBUTORS

PHIL BURNS

Senior Associate
phil.burns@wrays.com.au

ANDREW BUTLER

Principal
andrew.butler@wrays.com.au

ALBERT FERRALORO

Principal
albert.ferraloro@wrays.com.au

SANDI FORMAN

Senior Associate
sandi.forman@wrays.com.au

TIM FRANCIS

Principal
tim.francis@wrays.com.au

BINDHU HOLAVANAHALLI

Associate
bindhu.holavanahalli@wrays.com.au

FRANK HURLEY

Chief Executive Officer
frank.hurley@wrays.com.au

CHRIS JUHASZ

Principal
christopher.juhasz@wrays.com.au

GILLIAN KAGGWA

Attorney
gillian.kaggwa@wrays.com.au

JUDITH MILLER

Principal
judith.miller@wrays.com.au

LAURA TATCHELL

Associate
laura.tatchell@wrays.com.au

JONATHON WOLFE

Director, Wrays Solutions
jonathon.wolfe@wrays.com.au

CONTENTS

- 03** Message from our CEO
Ignite | Is your business future ready?
- 04** Meet our newest stars
- 06** Protect your intangible assets
- 08** Australian Intellectual Property Report 2017 – opportunities to drive innovation
- 12** PIONEER | Interview with Thomas Thurston, Managing Director of WR Hambrecht Ventures and Founder and CEO of Growth Science
- 16** Forcing Chinese copycats to take a leap
- 18** ACCC is now targeting unfair contract terms in small business
- 20** Industry Insider
- 22** WIPO reports strong growth in international intellectual property
- 25** Supporting industry growth through Curtin Ignition
- 26** The notifiable data breaches scheme has landed
- 29** The IP Perspective
- 30** Australian Federal budget 2017
- 34** Amazon au deconstructed
- 36** What's on 2017: Calendar of events

CEO MESSAGE

I'm very pleased to welcome you to our third edition of The Gatherer – our regular flagship publication developed by our thought leaders especially for our clients. Through The Gatherer we aim to provide you with the most relevant insights and news into the ever changing intellectual property landscape, both here in Australia and overseas.

In this edition, we bring you insights, perspectives and information on a range of topics including why it is important to vigorously protect your most valuable, intangible assets – namely your intellectual property. However, first, we are delighted to announce that we recently welcomed some bright new stars to our team.

Just a few weeks ago, Jennifer McEwan, David King and their team of trade mark and patent attorneys from EKM joined the team at Wrays. With expertise in trade marks, patents and commercial law, we believe this acquisition will strengthen the depth and breadth of our operations along the Eastern Seaboard.

We also address the fear, uncertainty and doubt circling the retail industry in Australia at the moment. In particular, we explore the anticipated launch of Amazon AU through the often-misunderstood lens of Disruption Theory. Jonathon Wolfe, analyses the theory underpinning Disruption Innovation and reflects on the potential impact of the retail giant's proposed market entry to the broader retail industry.

Andrew Butler provides some interesting insights into the weird and wonderful world of intellectual property rights in China. He looks specifically at some of the steps businesses seeking to operate in this region need to consider from an intellectual property perspective, such as the importance of seeking early trade mark registration and establishing effective trade mark watching programs in relation to key brands before it's too late.

Finally, in our recent Pioneer podcast interview, I had the privilege and the pleasure of discussing the ongoing pressure to be innovative in the current business environment with Thomas Thurston, Managing

Director of WR Hambrecht Ventures and Founder and CEO of Grown Science. I also had the opportunity to ask him about his experience working alongside the renowned Professor Clay Christensen at Harvard University. Please visit our website to listen to the full, illuminating conversation.

With so much happening in the intellectual property landscape in Australia, especially following the recent federal budget, and within the region more broadly, I hope that this magazine is able to shine a spotlight on some of the interesting legal, cultural and commercial issues facing us as we navigate through today.



FRANK HURLEY
Chief Executive Officer
T +61 8 9216 5111
frank.hurley@wrays.com.au

Is your business future ready?

Businesses of all sizes feel pressure to invest in innovations before competitors disrupt their plans. What if there was an algorithm to predict the likelihood of a new strategy succeeding?

Wrays uses data science to determine the probability of

an idea or business surviving or failing - and what changes could increase the odds of success. The same methodology is employed by Fortune 500 companies such as Johnson & Johnson, Intel and 3M.

To discover more visit <http://www.wrays.com.au/services/wrays-ignite/>



MEET OUR NEWEST STARS

In April 2017 Jennifer McEwan, David King and their team from EKM IP in Melbourne joined Wrays, bolstering our trade marks and patent attorney services on the Eastern Seaboard.

The acquisition is part of Wrays' long-term vision to grow and expand our operations Australia-wide. As the legal services marketplace continues to evolve, we want to ensure Wrays can offer our clients access to a broad range of IP, legal and strategic consulting services on a national level.



JENNIFER MCEWAN
Principal

Jennifer specialises in trade mark law and practice providing her clients with advice across all facets of trade marks including strategic advice, trade mark registration, due diligence work, infringements and disputes. She is also a Director of the Institute of Patent & Trade Marks Attorneys (IPTA) and sits on IPTA's Council.



DAVID KING
Principal

David has worked in intellectual property for 35 years building a strong track record advising clients in commercialisation of intellectual property, consumer protection, advertising and marketing, sports law and intellectual property litigation.



ROBERT CROSS
Consultant

Robert specialises in patent and design law, and the drafting and prosecution of patent and design applications in Australia and overseas countries.



MICHAEL PERNAT
Senior Associate

Michael specialises in patents and registered designs across the medical devices industry. He brings a passion for drafting and prosecution of patent applications relating to a wide range of inventions for mechanical devices and machines.



CHRIS CAO
Senior Associate

Chris provides advice to clients on trade mark protection and prosecution in Australia and overseas. He holds a focus on building client relationships and practical management of brand portfolios.

Q&A with the team

What would your number one tip be for a business wanting to innovate in today's environment?

Jennifer McEwan:

Today's business environment is extremely challenging and competitive, and that landscape is set to continue, particularly in the global market in which we operate. To compete effectively businesses need to ensure they encourage and reward innovation at all levels in their structure. They also should develop a well thought through intellectual property strategy to protect that innovation, not just from an Australian perspective but also internationally in key markets.

David King:

To seek professional advice at the initial stages of innovation as to the best way of identifying, protecting and commercialising the intellectual property in your innovation. The innovation landscape is littered with inventions which should have resulted in being a commercial success for their inventors but which have not been because those inventors failed to identify and protect the IP in their inventions when they were able to do so. As a result, the inventions have been copied by third parties and the inventors have been unable to prevent that copying thereby suffering significant commercial loss.

What are the biggest trends you're seeing in innovation across the medical devices industry?

Michael Pernat:

Over the past several decades we have seen the development of medical devices, such as cardiac pacemakers, which are implanted into the human body for the purpose of automatically stimulating nervous tissues. More recently, however, we are starting to see very exciting developments relating to bodily implants which can not only stimulate nervous tissues, but the output of which can be controlled by the will of the host, thereby enabling the host to actively control wirelessly linked devices such as prosthesis or even external computerised devices. Such devices will be capable not only of restoring lost function but also enhancing it. The cyborgs are coming, watch this space.

As a specialist in metallurgy, what changes have you seen across the industry during your time as an IP professional?

Robert Cross:

The overwhelming change across the industry, throughout the world, has been the dominance established by China in virtually all areas of metal production and supply, based on acquisition of outdated foreign plant and technology. However, countering this to a significant degree has been the ongoing quality research that continues to be conducted in Australia, in CSIRO despite regular funding cuts, several universities and a reduced industry base.

What would your number one tip be for a business wanting to protect their brand in today's environment?

Chris Cao:

My top tip would be that when businesses are deciding on using a new trade mark to use for goods and/or services, they should conduct searches to ensure that they are free to use the trade mark in Australia and in any key international markets. Ideally, the business owner should come up with a list of potential trade marks since some marks may not be available to use from registration and/or infringement perspective. A business owner should contact a Trade Marks Attorney before using a trade mark and/or seeking trade mark registration, however brief searches can easily be conducted to eliminate any proposed trade marks that are already protected in order to streamline costs.



PROTECT YOUR INTANGIBLE ASSETS

“Intellectual property drives the success of many businesses, but it’s a vulnerable asset that requires expert protection.”

Nobody can afford to leave their most valuable belongings lying around unguarded. That’s why companies need to be vigorous about managing and protecting their intellectual property.

Indeed, often a company’s most valuable asset is its intellectual property (IP) - that unique invention, idea, design, application or process that gives it a key advantage. A robust IP portfolio creates commercial opportunities, potentially giving businesses credibility, bargaining power, the ability to raise capital, or the ability to gain exclusivity in a market.

The importance of IP can be clearly understood when we look at the enormous shift that has taken place in how businesses are valued. Forty years ago, a company’s worth was based on its net tangible assets, such as machinery, buildings, land and inventory. Today, for many companies listed on the ASX up to 80 percent of their value is represented by intangible assets.

These companies rely on ideas and innovation for their prosperity – in short, their intellectual property. So, in today’s world it’s critical that IP is properly understood and managed, in order to open up the true value of commercial opportunities.

Creating an IP culture

Wrays’ specialty is helping clients understand the nature and worth of their intangible assets - and advising them on how to protect, manage and leverage them. The first step for any company is recognising that its IP assets are a very significant

part of the business. Every business has IP assets, whether it’s work processes, clever innovation, or registerable designs to name a few.

Just as businesses have insurance to protect their buildings and assets, or contracts to protect their trade agreements, they should also be thinking about managing and protecting their IP assets.

One of the most important things a business can do is create an IP culture, which would include having process in place that identify, evaluate and manage IP as it is created. The worst-case scenario is that the information lives in someone’s head and it goes when they eventually leave the business.

Unregistered IP and registerable IP rights

Once a business has captured its IP, it can be divided into two main categories: unregistered IP and registerable IP rights.

Broadly speaking, unregistered IP assets include copyright, trade secrets, know-how, and unregistered trade marks. To protect unregistered IP assets, businesses should ensure employees have confidentiality obligations and avoid making public statements and disclosures.

Registerable rights include tools like patents, trade marks, design registrations, domain names and plant breeders’ rights.

With respect to registerable rights, an attorney would help build a case, make sure the protection a company gets is as broad as can be, explain what can and can’t be registered,

and help understand any nuances associated with a company’s inventions or designs and its rights. The key issue is the quality of the advice and services that a business receives.

The commoditisation of IP

Unfortunately, patents and trade marks have become commoditised by some operators. However, a patent, for example, is only as good as the quality of the drafting, the understanding of the technology, the industry and the market, and how it fits in with a business’s strategic direction.

It can be likened to hiring a builder. Some builders are capable of creating basic structures, whereas others have the technical and skills know-how to build structures of great size and scope or architectural significance. If you wanted to build your dream house you wouldn’t go to Bunnings and buy the materials to do it yourself, nor would you hire the handyman down the street! There are Acts governing formal rights like patents, trade marks, design and copyright, and the best approach is to hire a specialist who understands the nuances of the law.



FRANK HURLEY
Chief Executive Officer



ALBERT FERRALORO
Principal



Australian Intellectual Property Report 2017 – opportunities to drive innovation

The Australian Government has recently published the 2017 edition of the Australian Intellectual Property Report. As with previous years the report sets out the latest data, initiatives and information about the Australian IP system. This is a brief summary of some of the key points in the report and what to expect from IP Australia this year.

Australia's IP office appears to be proactively looking for opportunities to drive innovation and value to the Australian people, using a combination of new initiatives and research, driven by greater data availability and data management tools.

Statistically, patent and trade mark activity in Australia remains steady, and design and plant breeders' rights (PBR) filings have slightly increased on the previous year. The main Australian users of each IP registration system are SMEs and private individuals.

New initiatives

IP Australia has identified several new initiatives slated for completion in 2017, including:

- A database that will link the trade mark registry to a global atlas of place-names – to be launched later in 2017. This world-first data resource will allow researchers to investigate the use of domestic and international geographical terms in Australian trade marks.
- A database of pharmaceutical substances as recorded on patent term extension applications, and patent numbers with links to public Pharmaceutical Benefits Scheme expenditure data.
- A Global Trade Marks Database. In development. At present it includes beta links between the US, New Zealand and Australian trade mark registries, and is set to include the IP Offices of the EU, UK and Canada by mid-2017.

IP Australia also highlighted its launch late last year of the IP NOVA data analytics tool – accessible here <https://ipnova.ipaustralia.gov.au/#/> – which allows users to search the complete patent, trade mark and plant breeder's right registries across a range of criteria including locations, applicant identity and technology classes.

Research

IP Australia's research projects over the last year have included:

- The impact that patent expiry has on pharmaceutical usage, in terms of scripts issued and expenditure, the results of which will be published mid-2017.
- A study by the University of California, Davis on patent grace periods which included a literature review and modelling to assist in testing how grace periods might affect innovation.
- Analysis of patent examination (with Queensland University of Technology).

For the coming year, research projects include:

- The impact that collaborative grants have on the patent productivity of universities.
- Operational research to complete work on trade mark forecasting.
- The links between R&D and patenting in Australia.
- Ongoing analysis of the costs and benefits of joining the Hague Agreement on international designs.

Productivity Commission Report Next Steps

IP Australia flagged that the Government is currently considering the Productivity Commission's recommendations inquiry into Australia's IP arrangements, in advance of a further consultation with stakeholders prior to a response to those recommendations in mid-2017.

Australia's university-business collaboration scorecard

Australia has recently received negative press around engagement between its research organisations and industry with a view to commercialisation of IP. This largely arises from a single data point, being a survey used by The Organisation for Economic Co-operation and Development (OECD) where the Australian Bureau of Statistics asked innovative firms in 2013 how often they collaborate with research organisations. On the OECD measure, Australia ranked last among OECD countries on such collaboration.

In an effort to get a clearer picture of that collaboration in Australia, IP Australia conducted its own inquiry, asking the universities how often they collaborate and using the latest version of the IP Government Open Data (IPGOD) to identify IP right applications co-filed with universities and tech transfer offices of research institutions.

The results suggest that, in Australia, collaboration between universities and industry is not as poor as the above report suggests. Far from being last, on an analysis of PCT applications filed worldwide where universities co-file with industry as a percentage of total PCT filings from that country, from 2000-2015, Australia consistently ranked around 13th out of 35 OECD countries. Australia also places in the top 10 OECD countries when it comes to number of PCT applications filed by universities.

The old 'lies, damned lies and statistics' adage comes to mind when attempting to interrogate this data. However, it does appear that, whilst the level of engagement between Australian research institutions and industry is not as dire as posited in the OECD scoreboard, there remains room for further engagement, if necessary. However, if universities are filing patent applications without industry partners, that does not mean that there is a lack of collaboration – licences can be and have been used to achieve collaborators' ends – or that collaboration is necessary. Perhaps a

more pertinent question is; if collaboration is increased, would the overall output of Australian innovation be increased? If the answer is yes, then there is a good case for putting into place initiatives to promote that engagement.

Measuring the percentage of existing applications that are collaborative does not necessarily shed any light on this question, as it cannot show how many more applications would have been filed or IP rights conceived if collaboration had been greater.

IP Australia has flagged for 2017 a research project looking into the impact that collaborative grants have on the patent productivity of universities. Perhaps that will touch on the above question and drive grant policy in the future.

To read the full report, please click here.



TIM FRANCIS
Principal

OVERVIEW OF THE NUMBERS

PATENTS

- A 1% overall **decline** in patent filings into Australia compared with 2015.
- **75%** of Australian resident patent filings in Australia were by individuals, and SMEs. Patents are clearly not only the domain of large corporates.
- Since the GFC, annual patent filings in Australia increased by 3-4%, but that growth is not as high as the worldwide average, which was 8% for the same period. The main driver of global growth over that period was a 320% increase in filings from China.
- Applications from other countries still account for about **91%** of all Australian filings. Australia saw a 6% decline in filings by applicants from the US (which still accounts for about 45% of all patent filings). Japan, Germany, UK and Switzerland round out the top 5 places from which Australian applications originate, other than Australia.
- The innovation patent was for the first time ever used by more foreign filers than Australians. This was again driven almost exclusively by a **142%** increase in applications from China. The Productivity Commission recommended the abolition of the innovation patent, so it will be interesting to see whether this increased international uptake affects the Government's response to that recommendation.
- The most popular destination for Australians to file overseas was the USA, with **43%** of applications. This was followed by China with 10% and the EPO with 7%.

TRADE MARKS

- There was a slight (**3%**) overall decline in trade mark filings into Australia compared with 2015.
- Applications by foreign applicants accounted for about **34%** of total filings into Australia, roughly consistent with previous years.
- **90%** of Australian resident applications in Australia were by individuals and SMEs.

Registered Designs

- There were a record number of applications in 2016 (albeit a modest **3%** increase on the 2015 figure).
- As with patents, the USA accounted for the largest number of applications from foreign entities, with **24%** of overall filings. The top 5 was rounded out by Japan, China, the UK and Germany.

Plant Breeders' Rights

- The number of PBR applications compared with 2015 **increased** by 8%. This was driven mainly by an uptick of 22% in foreign filings,
- SMEs account for **50%** of filings by Australians, and private individuals and large firms account for 25% each.
- The USA remains the largest foreign PBR filer, with **21%** of applications. Rounding out the top foreign filers are the Netherlands, NZ, France, UK and Germany.
- IP Australia has **reduced** the number of personnel able to register PBRs, with the result that registrations are not being granted at the same rate as previous years.



In our recent Pioneer podcast interview Wrays' CEO, Frank Hurley spoke with Thomas Thurston, Managing Director of WR Hambrecht Ventures and Founder and CEO of Growth Science about his experience working alongside Professor Clay Christensen at Harvard University and the ongoing pressure to be innovative in the current business environment.

Thomas Thurston

Managing Director of WR Hambrecht Ventures and Founder and CEO of Growth Science

Frank: Thomas, you worked alongside professor Clay Christensen at Harvard, who's one of the experts on disruption theory I understand. What was that like?

Thomas: Obviously Christensen's extremely smart and well credentialed but I think one of the things that surprised me, or delighted me the most working with Christensen, is that he's one of the most humble, down to earth people you'll ever meet. You'd have no idea who you were talking to if you were sitting next to him on the bus. He's much more interested in asking questions than he is about talking, which is can be rare for a Harvard professor.

Frank: Is he practical or more abstract? Does he apply his stuff?

Thomas: He often gets accused of being too theoretical, but I find that he's got a much deeper appreciation for operations than most people think. He actually started a ceramic high performance start up, before he became a professor. It was quite successful and went public. He knows what it's like to run a business, and the stress of trying to generate revenue. Where a lot of professors don't have that background.

I think he gets accused of being theoretical, and in reality I think he's a lot more practical than most of his peers. Because he's become so famous and well known, I think people sometimes lump him in as a guru. When they put him in this category of people and he gets accused sometimes in academia of being too much flash and maybe the inference is not enough substance.

I think what's interesting is, he's actually just a really good scientist, and although he's become famous, when you look at his work he really has a deep appreciation for the scientific method and what quality research looks like. He follows it very closely. I think a lot of people have taken his ideas and sort of bastardized them in other ways. His work that he's done directly is quite powerful.

I think in hindsight, the biggest takeaway from working with Christensen was probably just shoving the scientific method into my DNA. In other words, he really does explicitly demand that you go through all the steps, all the statistical tests and all the control tests. He really teaches you what that is and why that's important. I never would have expected that that would have been the biggest takeaway from working with him. I think ten years later, that's the one thing that's shaped everything I've achieved since then.

Frank: Which is a great segue into Growth Science and the approach. Can you tell us a bit about that, and what you and your team have developed?

Thomas: Sure. About ten years ago I was working at Intel in the innovation group. I thought it would be really fun if I could build a small database of all the projects and new products Intel had tried to launch over the last 12 years. Then add all the venture capital investments I could find that they had done, and all the acquisitions. Then compile that data into a big database and start to try to mine it for patterns. What I found is a lot of the things that we cared about the most at Intel, when we were picking which things to fund, a lot of those variables actually weren't very predictive of outcomes five or seven years later.

This was true at Intel. As well as any other venture capital organization or investment firm, a lot of our analysis was based on the technology and the team. In other words, is this a technology that's much better than what's out there today? Is this a team with a great success rate that we would want to back?

Frank: Which is what logically you would think of.

Thomas: That's right. It makes perfect sense, and this is what of course nine out of ten venture capitalists will even tell you they look for now. Almost any way you define a team, and the raw technology, it's really hard to find any statistically significant relationship with what actually happened and the commercial success of those businesses later. That's a surprise to most people.

Frank: It is to me.

Thomas: Yeah, it was kind of underwhelming in fact, the correlation was so low. Then we found that there were some other variables that certainly we knew about, but we didn't think about that hard. They're much more predictive of outcomes than anything else. The realization early on was, "Oh my gosh, what if we're looking at the wrong things?" We want to look at what product to launch and what investment.

Frank: Is that like a silver bullet, or it's a range of things that would be good predictors?

Thomas: We ended up finding many things, but really the question is, if you look at a standard business plan, and you were to take every couple of sentences and put them into a new field in Excel. All these clues about this idea. Really the question was, which of those clues are predictive and which aren't? Obviously that takes a tonne of very slow, careful work to try to boil the ocean and find those variables. That's what econometricians do. Using techniques that are very well established, we were able to figure out as best we could which are those predictive variables.

Frank: We know that businesses large and small around the world are facing challenges including digital disruption. Innovation is a buzzword, but we all accept that we need to be more innovative if we're going to survive in this new world. What are the three key learnings you'd like to share with corporate Australia, following your work with the Fortune 500 companies?

Thomas: One is, to echo the theme of being up front about your competitors. One of the things I'm seeing everywhere, not just Australia, there are huge disruptive threats coming out of Asia, that are landing smack bang on the front porch of companies. Even companies in Australia that have been wonderful cash cows and happy businesses, where everything's been great for 50 years. For the very first time, they're seeing very odd, very strange threats show up. Just four years ago banks were only beginning to understand that their biggest threats were coming from Silicon Valley. They had spent the prior hundreds of years fighting each other. For banks, you'd have Rothschild Bank fighting Credit Suisse, fighting JP Morgan. The biggest and scariest threats ended up coming from tech companies, and now the financial industry has fully embraced that.

It's happening all over the place, and lots of these brick and mortar businesses that hadn't had the boat rocked before, and now it's going to be rocking like it hasn't been already. One thing is, global threats are real and vicious, and the only way you're going to be able to combat them is by placing some bets of your own. You're going to have to figure out, what's the wave that's going to crash over your business, and how can you embrace it instead of being drowned by it.

Frank: So is that an argument to diversify or is it just an argument to deliver in a more innovative way?

Thomas: You may need to diversify your strategies, which is different than diversifying your market. In other words, you might still be selling bricks but you might need more than one strategy to defend that market. It doesn't mean that you're now necessarily investing in health care. When there's more volatility in the market, you need to hedge your bets more, because nobody knows what the future will be. I think companies that never thought of themselves that way, they thought, "Oh, I'm running a business and I have customers and I sell them things." They now have to realize that they have to begin to play a portfolio game, place bets and know how to do that, and structure those bets so that they can participate in the future and not be drowned.

Frank: From your experience, if I'm running a company and placing a bet, how long would I let that bet run for before I pull the pin?

Thomas: The best bets are the ones that pay for themselves in less than three years. In other words, you make a small bet that quickly pays for itself. Then what you've bought yourself is an option in perpetuity. As long as you don't have to keep funding it. Once it pays for itself you can let it run forever. I think every year that it has to come back to you for money, divide up its probabilities of success. I think the goal is how many autonomous bets can I get to pay for themselves? The more complex your environment, the more bets you need. The more stable your environment, the less bets you need.

Frank: Anything else you'd like to share with us? I know there are people for example going, "Well it's the quality of the management team. It's the quality of the board that really makes the difference." I think your algorithm might suggest something else.

Thomas: Yes, this is one of the more controversial things. There are more studies, and some very good studies, out of academia, on the impact of teams on the performance of companies. There are hundreds, literally, of studies on this and they've defined teams almost every way you can think of. Everything from their backgrounds to their Myers Briggs scores to their spirit animals. They've defined success in almost every way you can think of. Is it financial success? Is it in start-up exit? Is it learning? You look at all these studies and most of them find that there's no statistically significant correlation between the team and the outcome. Some studies have found that there is some effect, but it's actually relatively small.

My favourite study was done by some professors at Harvard that looked at entrepreneurs who had been successful in their prior start-up. They looked at a second group who had failed in their last start-up, and a third group of first time entrepreneurs. All they did is they said, okay, how did these entrepreneurs do in their next start-up? They found that of the entrepreneurs who had been successful before, 30% of them were successful in the next one. Of the ones who had failed before, 20% of them were successful. Then the first time entrepreneurs, only 18% of them were successful.

What most people said is, if your entrepreneur has already been successful, they have the highest chances. True, but the difference between the best group, which was 30%, and the worst group which was 18%. The difference between 30 and 18 is only 12%. In other words, the team's success prior only affected 12% of the variance in outcomes. It didn't explain 88% of what happened. In other words, if you buy that study, you should never put more

than 12% of your investment decision on the team. What some people say is, "Well yeah, but if it's so early, all you have is people. What else do you invest in?" Because you know the strategy will change. It just seems like you're betting on people.

Frank: I agree. Which is what 99 out of 100 VC's do, right?

Thomas: That's right. My point is that if you don't know what the other 88% is, you probably shouldn't be a venture capitalist. Here's what I would say about teams, we all know that bad teams can ruin any project no matter how good it is – you need to avoid toxic teams and toxic people. What we've found to be the most predictive of outcomes is qualities about that business itself, about the business model. It's the business, and you just need a team good enough not to mess it up. If you use the jockey horse metaphor... do you bet on the jockey, the team, or the horse? It's the horse. That's statistically what we've found.

Frank: The jockey just has to stay on.

Thomas: Exactly. The jockey just can't fall off. Warren Buffet always said, his quote is, "Good jockeys will do well on good horses, but not on broken down nags." Even he's found, in his own qualitative experience, get the right business and that's more important. I think between that kind of qual and our quant, we're really finding the same thing.

Frank: It's been fascinating talking with you. I could spend hours discussing this with you. It's a really interesting topic. It's great to have you in Australia.

Thomas: Thank you. Delighted to be here.

Click here to listen to the full conversation, please visit www.wrays.com.au/insights/pioneer-podcast-series/





FORCING CHINESE COPYCATS TO TAKE A LEAP

Anyone with even a remote interest in intellectual property will have observed that, on the same day President Trump whispered into Chinese President Xi Jinping's ear while eating 'the most beautiful piece of chocolate cake you've ever seen' to inform him of a missile strike on Syria, the Chinese Government announced that his daughter Ivanka Trump's trade marks had been preliminarily approved for registration in China.

Such a public announcement is unusual, to say the least, for most applicants for IP rights in China. A Chinese Government spokesman has indicated that there was nothing untoward about this, as 'we consistently follow the principle of equally protecting legal trade mark rights of trade mark owners of foreign companies and handle the process of relevant trade mark registration in accordance with the law and rules'.

However in our experience this type of public announcement is a somewhat out of the ordinary! IP practitioners will in any event probably have smiled wryly because, for Ms Trump, the trade mark battle has now only just begun. Trade mark and domain name squatting, attempts to misappropriate brands and their heritage and provenance, are all a daily part of the IP scene for IP rights holders in China.

It is a commonplace business model for the brands, get-up of products and promotional materials, and the genuine websites of well-established companies to be duplicated by Chinese entities, and

for the Chinese entity to effectively hold itself out as, or stand in the shoes of, the established company. It is also common practice for Chinese companies and individuals to establish business models which revolve around filing applications and securing registration for the trade marks of others, and then negotiating the sale of the true owner's property back to the true owner.

This sort of conduct inevitably leads to the erosion of, or worse, the destruction of the equity in a brand and in a company's standing in the Chinese market, and a mistrust by consumers as to who is purveying the genuine product.

As a civil law country, the concept of prior user rights and reputation count for little in these circumstances, and well-advised, well-funded (and nimble) Chinese entities can take advantage of the law for financial gain in this way.

In order to try and guard against such outcomes, it is imperative that, at the very least, early trade mark registration for both English language and Chinese character versions of key brands is pursued, and that trade mark watching

programs are established in respect of key brands. Taking court action for copyright infringement and breach of unfair competition law is also essential in clear cases of misappropriation of heritage, provenance or other proprietary elements of one's business.

It can often feel like attacks on key brands and the DNA of a business are never ending, and it requires discipline, determination and money, and a preparedness to take action at an administrative level or through the Chinese courts.

A failure to act will inevitably result in the brand being lost and the business' value being written down.

The problem is exacerbated when this disease starts to infect the trade marks Register of the true owner's country of origin. Whilst more sophisticated legal systems may provide some relief from such conduct, active trade mark filing and monitoring programs are still necessary to prevent similar brand equity erosion in home markets.

Welcome to the weird and wonderful world of IP rights in China!



ANDREW BUTLER
Principal



SANDI FORMAN
Senior Associate



ACCC IS NOW TARGETING UNFAIR CONTRACT TERMS IN SMALL BUSINESS CONTRACTS

The ACCC has announced that the new provisions extending the unfair contract protections of the Australian Consumer Law (ACL) to small businesses will be a priority in 2017.

The law to extend the unfair contract protections of the Australian Consumer Law (ACL) for consumer contracts to standard form small business contracts came into effect on 12 November 2016.

All standard form small business contracts entered into or renewed on or after 12 November 2016 are governed by the new legislation, as are terms of pre-existing contracts that are varied after this date.

The ACCC has warned that it will be taking enforcement action against companies across a range of industries over business to business unfair contract terms this year.

The ACCC has indicated that it has received 48 complaints from businesses about unfair contract terms since the introduction of the laws in November 2016. The ACCC has also confirmed that a number of investigations have also been commenced as a result of these complaints and issues raised in the recent industry review.

What sort of terms are 'unfair'?

The ACCC conducted an industry review in November 2016 and analysed the provisions of 46 contracts across the advertising, telecommunications, retail leasing, independent contracting, franchising, waste management, and agriculture

sectors. From this review, the ACCC identified a number of types of clauses which it considers to be potentially unfair, which continue to be used in standard form contracts, including:

- the right for one party to unilaterally vary all terms (or at least important terms) in an unconstrained way, for example, without the right of the other party to terminate the agreement in light of the variation;
- broad and unreasonable powers for one party to protect themselves against loss or damage by imposing broad indemnities or limitations of liability (e.g. limiting liability of the larger business where the larger business is itself responsible for the loss or damage);
- the right for one party to unreasonably cancel or end an agreement as it suits them; or
- the right to unreasonably limit or prevent small businesses from exiting their contracts.

What you need to do

There is quite some uncertainty as to when the legislation will apply in any given circumstance, particular due to the way 'small business' is defined in the legislation. For example, the drafting of the legislation means that businesses may not know whether the regime applies without enquiring into the head count of their potential small business counter-party.

Given these uncertainties, and the ACCC's particular focus in this area, it is imperative that businesses review all standard form contracts to if there is a possibility that they will be entered into with a small business.

Businesses should review their standard form contracts to, at the least, temper the most egregious provisions particularly in circumstances where they are rarely, if ever, relied on.

Alternatively for some agreements, businesses may look to start negotiating their terms to avoid the application of the regime, as the provisions only apply to standard form contracts. However, proper records of such negotiations should be maintained.



JUDITH MILLER
Principal



BINDHU HOLAVANAHALLI
Associate

INDUSTRYINSIDER

WHAT'S ON!

International Trademark Association (INTA) Annual Conference

20 - 24 May 2017, Barcelona

We're excited to be attending the International Trademark Association's (INTA) Annual Meeting in Barcelona, Spain May 20 - 24.

Members from the Wrays team will join 10,000 other delegates to hear and share the latest insights from across the global intellectual property landscape. The Association holds the meeting outside of the US every three years. INTA has previously been held Annual Meetings in Amsterdam and Berlin but has yet to travel to Southern/Mediterranean Europe - 2017 will be INTA's first Annual Meeting in Southern Europe.

We look forward to welcoming the team back to Australia to share their insights and learnings from other IP professionals from across the globe.

Innovation Nation

8 & 9 June 2017, Sydney

Innovation Nation is an initiative by the Business Council of Australia to reset the conversation in Australia about the role of larger corporates in the innovation ecosystem. An effective innovation system promotes jobs, economic development and prosperity for our country, it's a vital part of our plans for the future as we confront the next wave of technology disruption and move out of the last mining / agribusiness boom. We all have a part to play in aligning ourselves with our world class research institutions and understanding better how to collaborate with each other in a safe and constructive IP environment.

We're pleased to share that Jonathon Wolfe Director, Wrays Solutions has joined the team to assist in the design and development of the Innovation Nation event which will be attended by Innovation leaders from Australia's biggest companies are regularly meeting and prototyping ideas to showcase and build the next BBQ stopper.

WA Innovator of the Year

May - November 2017, Perth

Wrays are proud to sponsor the WA Innovator of the Year (IOTY) again this year. The WA Innovator of the Year (IOTY) program has showcased innovative and entrepreneurial individuals, businesses and creative minds since 2006. The program has benefited many of those who have participated as well as the broader community of Western Australia. The Western Australian government is committed to raising the profile of innovation in Western Australia and supporting the delivery of government initiatives to advance the growth of the State's innovation based industries.

The WA Innovator of the Year program is a valuable initiative which provides support to innovators and entrepreneurs across the State. It was officially launched on Tuesday 2 May and applications for the program are now open and will close at 12:00pm AWST on 6 June 2017.

As part of our sponsorship, Wrays will be offering IP advisory sessions to all applicants on 14 and 19 June, 2017. There are a number of stages throughout the year including mentoring, pitch presentations and finally the awards ceremony announcing the winner held on Wednesday 15 November 2017.

CONGRATULATIONS

Congratulations to Wrays' Principal Albert Ferraloro who recently became the President of LESANZ at their annual conference held in Melbourne earlier this month. A long-time active member of the WA and national committees, Albert looks forward to sharing his deep intellectual property and industry knowledge in this leadership role which supports the broader IP community. The conference is the annual flagship event of LESANZ and as a first for 2017, also combined with the Asia Pacific region to broaden the learnings and focus on IP opportunities throughout the whole Asia Pacific region. With a focus on 'Licensing for wellbeing - Health, Nutrition & Sport', the program highlighted the opportunities that arise with providing the wellbeing of nine billion people by 2050 and the challenges of keeping them healthy and active.

PROTECTING YOUR BRAND AND INNOVATION IN SINGAPORE

As of 1 April 2017, innovators and brand owners can benefit from reduced filing fees in when seeking to protect their inventions or brands in Singapore. With Singapore being Australia's fifth largest trading partner, the reduced fees will be welcomed by Australian businesses that are trading in or looking to enter the Singapore market.

The fee adjustments form part of the Intellectual Property Office of Singapore (IPOS) efforts to support local innovators as well as driving innovation in Singapore. However, the decrease in fees will also aid in a cost reduction for Australian businesses and brand owners, when the various stages in the life cycle of protecting an invention or a trade mark are considered.

Furthermore, fees will be reduced for anyone requesting a patent search and examination reports. And, for those seeking to protect their brands in Singapore, a 30 per cent discount is available when using a pre-approved list of goods and services.

In addition, if you are a patent owner is looking to offer their patent for licensing; a 50 per cent discount on patent renewal fees is available. This incentive is intended to encourage intellectual property (IP) owners to actively use their patents, or consider releasing them to the public domain.

Thus, with these fee adjustments, Singapore is an attractive country for IP filing and Wrays is well placed to assist innovators and brand owners in seeking IP protection in Singapore as well as developing an effective IP strategy in this region.

By Gillian Kaggwa, Patent & Trade Marks Attorney

WIPO REPORTS STRONG GROWTH IN INTERNATIONAL INTELLECTUAL PROPERTY

The World Intellectual Property Organisation (WIPO) recently released its annual report detailing filing statistics for each of the International IP policies which it oversees. These include the Patent Cooperation Treaty for international patent applications; the Madrid system for international trade mark applications; and the Hague system for international design filings. Each of these international systems experienced significant growth in 2016 with patent applications increasing by 7.3%, trade mark applications up by 7.2%, and design applications up by 13.9% on 2015 filings.

Patent Filings Continue Strong Growth Globally

In 2016 WIPO continued its trend of accepting a seemingly ever-increasing numbers of international patent applications seeing 233,000 applications, a 7.3% increase on 2015 applications. Not surprisingly, Asia, the USA and Europe again mark the top three regions for originating international patent applications (Fig. 1).

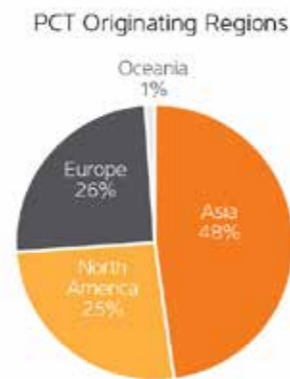


Figure 1

2017 also marks the year in which WIPO celebrates the publishing of its 3-millionth patent application after 39 years of operation. This is quite significant seeing that it was only 5 years ago that the 2-millionth application was published in 2012.

Enter the Dragon

China in particular has recorded a staggering 44.7% increase (Fig. 2) in the number of international patent application filings (43,168 applications) to take an 18.5% share of the total international patent filings in 2016 (Fig. 3), putting it at the third highest patent filer just behind Japan (45,235 applications or 19.4%) and

the United States (56,595 applications or 24.3%). The rise and rise of China as a patent powerhouse continues the trend in their double digit annual growth of patent applications since 2002. If this current trend continues, China will overtake the U.S. within two years as the largest user of the PCT System. Rounding out the top five top filing nations are Germany (7.9%) and The Republic of (South) Korea (6.7%).

PCT Applications Growth



Figure 2

Top 5 PCT Originating Regions



Figure 3

It is not just patent applications where China is showing great gains. Chinese applicants filed 3,200 trade mark applications in 2016 accounting for 6.1% of the total trade mark applications and a staggering 68.6% increase on international Chinese trade mark applications in 2015. These increases have been driven primarily by the growth of resident applications, and are telling of the rise in importance intellectual property is playing in the Chinese market. Interestingly, growth in Australian trade mark applications primarily came from non-resident applications and is indicative of the importance of the Australian market to overseas entities.

Australia lagging, but still improving

Australian applicants filed 1,835 or 0.79% of the total number of 233,000 International applications filed in 2016, an increase of 5.4% on 2015 filings (1741 applications), ranking it at no. 16th internationally. This is still below the peak in pre-GFC 2007 of 4,100 international patent applications but continues the positive upward trend in filings since the 2013 low of 1,604 applications.

WIPO, in co-operation with Cornell University and INSEAD publish a Global Innovation Index (GII). GI is an international ranking which aims to account for the multi-dimensional facets of innovation to help create an environment in which innovation factors are continually evaluated. Despite Australia's increase in patent filings in 2016, Australia has slipped from 17th place in 2015 to 19th place in 2016.

The GI indicates that the main sectors were Australia is lagging behind other developed nations include government expenditure on secondary students, graduates in science & engineering, GDP per unit of energy use, gross domestic expenditure on R&D (GERD), ICT services imports and outputs as a percentage of total trade, and research talent percentage in business enterprise.

Worse still, Australia significantly lags behind in the overall GI Efficiency Ratio based on innovation factors coming in at position 73 overall (compared with China's 7th position). But it is not all negative, Australia's strengths include our tertiary education system including enrolment % and university rankings, ICT infrastructure (surprisingly!), local competition intensity, strategic joint venture alliances, the number of new businesses among the 15-64 year old population. Further details on any of these innovation factors and how the Australian business community compares globally can be viewed here www.globalinnovationindex.org/gii-2016-report.

Universities Continue to Focus on Research Commercialisation

In the research sector, the trend for universities to want to commercialise the research of their academic staff appears to continue with most university applications showing an increase (significantly so in some cases) in the number of patent applications filed. This trend could reinforce the value that the research institutions place on the intellectual

SUPPORTING INDUSTRY GROWTH THROUGH CURTIN IGNITION

property developed by researchers, possibly as additional revenue streams from research spin-out companies or licensing models of intellectual property.

The top 10 educational institutions (Fig. 4) filing international patent applications is again dominated by United States institutions taking 7 of the 10 places including all top 5 positions with University of California (434 applications, a 66% increase on 2015 filings), Massachusetts Institute of Technology (11% increase to 236 applications) and Harvard (up 3% to 162 applications) filling the top 3 positions respectively. The remaining 3 non-US institutions include Seoul National University (6th - 122 applications) and Hanyang University (9th - 101 applications) in South Korea and the University of Tokyo (7th - 108 applications) of Japan.

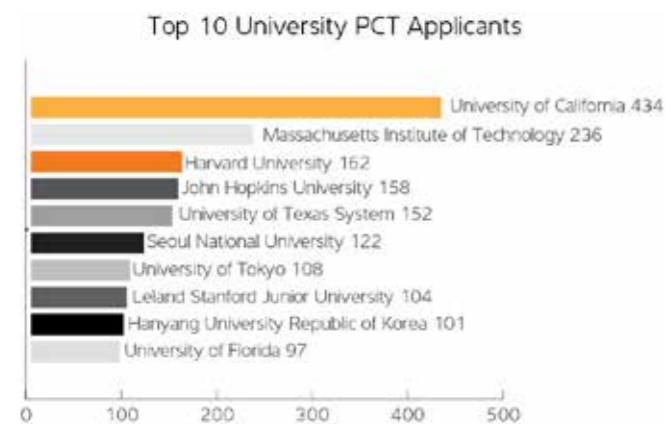


Figure 4

As represented in figure 5 the top 10 filers of international applications comprised seven companies from Asia and three from the U.S. Top filer ZTE moved up two spots from 2015 to push Huawei out of the leader position.

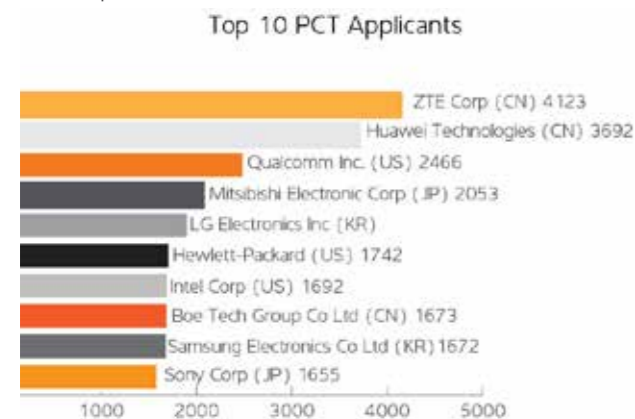


Figure 5

The fastest growing fields (Fig. 6) in 2016 compared with 2015 filings are those of: Control instrumentation (21.5% increase); medical instrumentation (12.8% increase); optical instruments (12.7% increase); digital communication (10.7% increase); and basic communication processes (9.4% increase) making to the top 5 positions.

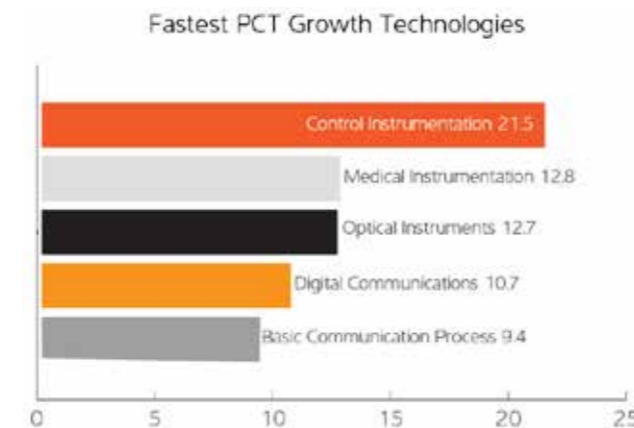


Figure 6

What does this mean for me?

With the continuing increase in international patent, design and trade mark applications, it is becoming increasingly important to ensure you protect your innovations and brands in each market place you operate and to be vigilant in the early enforcement of those rights. Failing to adequately maintain and update intellectual property portfolios, could see innovators being squeezed out of the market by protectionist policies of competitors which use the available IP systems, particularly patents, to provide legal monopolies for their products.

The increase in filings also indicates that competitors are establishing rights in growing numbers, making it prudent to ensure you first have the freedom to enter new markets and/or exploit new products before outlaying substantial expense to do so only to find out that your activities infringe the rights of others.



PHIL BURNS
Senior Associate

Curtin Ignition is an intensive five and a half day education program for aspiring entrepreneurs, academics and corporate innovators to trial and prepare their business ideas for the commercial environment.

Applications are open now and scholarships are available.

Sponsored by Wrays, the Program is run by the Curtin Centre for Entrepreneurship and is based on the successful Ignite Program managed and delivered by the University of Cambridge Judge Business School's Centre for Entrepreneurial Learning (CfEL).

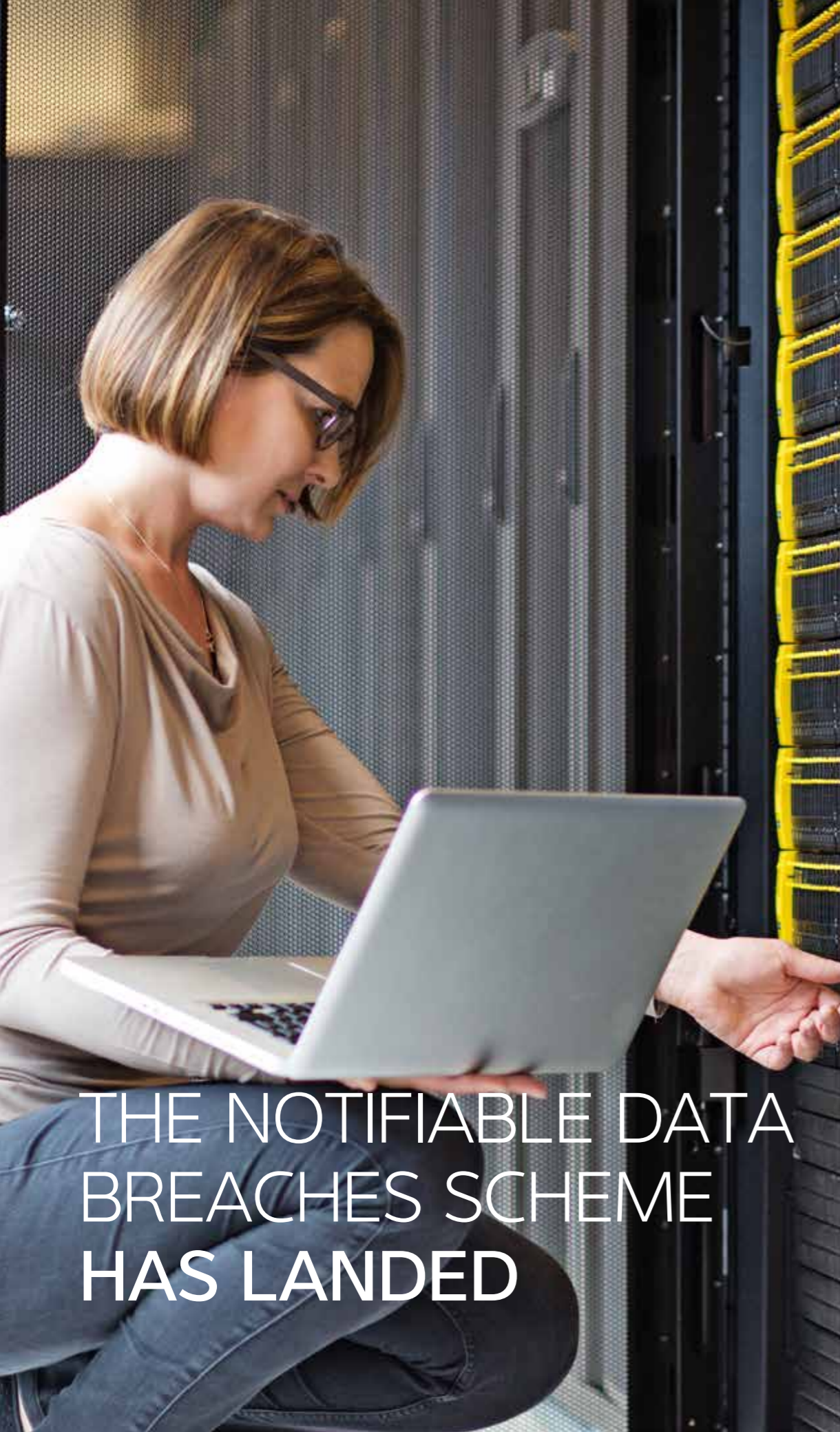
Curtin Ignition is suited to founders of early stage, high-growth business ventures, and people with new ideas that have potential to become high-growth, worldwide businesses.

The Program comprises of a blend of keynote and workshop teaching sessions, small group mentoring, panel, clinic and networking sessions. Delegates prepare a 10-minute business plan pitch over the course of the program, which they deliver to an expert panel and receive feedback on the last day of the program. All delegates must have a viable concept for a new business or an established early stage venture.

The Program runs from Sunday August 13 through to Friday August 18 at Technology Park Function Centre in Bentley, Perth.



Would you like to receive a scholarship to the Curtin Ignition Program? Wrays is supporting one potential participant through the Wrays Scholarship. To find out more, contact marketing@wrays.com.au



THE NOTIFIABLE DATA BREACHES SCHEME HAS LANDED

Australia's new privacy provisions will impose greater accountability and responsibilities on organisations to maintain robust security over their data, while assisting individuals with compromised data to reduce any resulting harm.

Subsequent to our last update in relation to the law on mandatory data breach notifications, the Australian government has finally passed the Privacy Amendment (Notifiable Data Breaches) Act 2017 (Cth). This Act amends the Privacy Act 1988 (Cth) by implementing what is known as the Notifiable Data Breaches scheme (NDB Scheme). The amending provisions will come into force on 22 February 2018 and will replace the existing Office of the Australian Information Commissioner's (OAIC) voluntary data breach notification system, which has been in effect since 2014.

Eligible Data Breaches

The NDB Scheme obligates all businesses earning \$3 million or more in revenue, government agencies, private health service providers and other organisations governed by the Privacy Act to notify individuals affected by a data breach that is likely to result in serious harm to the individuals to whom the data relates (referred to in the Act as an Eligible Data Breach).

Eligible Data Breaches can occur when personal information held by an entity is either:

- Subjected to unauthorised access or disclosure in circumstances where a reasonable person would

consider it likely to result in serious harm to the individuals to whom the data relates; or

Lost in circumstances where access to or disclosure of the personal information is likely to occur, and if this access or disclosure did occur, a reasonable person would consider it likely to result in serious harm to the individuals to whom the data relates.

Under the NDB Scheme, an Eligible Data Breach can occur if the serious data breach only affects one individual.

What is serious harm?

There is no definition of "serious harm" in the legislation. However, the legislation provides a non-exhaustive list of matters relevant to determining whether the access to, or the disclosure of, information would be likely to result in serious harm. These matters are:

- The kind or kinds of information
- The sensitivity of the information (eg does the data disclose health records of an individual or merely an individual's suburb)
- Whether the information is protected by one or more security measures (eg an encryption key to open emails)
- If the information is protected by one or more security measures, the likelihood that any of those security measures could be overcome
- The people, or types of people, who have obtained, or who could obtain, the information (eg exposure to a known hacker)
- The likelihood that the people who have obtained the information:

- could circumvent security technologies used to make the information unintelligible or meaningless (eg encryption)
- have the intention to cause harm to the individuals to whom the information relates
- The nature of the harm that may be imposed on an individual as a result of the data breach
- Any other relevant matters.

The legislation does not define "harm" but the Explanatory Memorandum provides some guidance. It states that the types of harm will vary depending on the circumstances and may include physical, psychological, emotional, economic, reputational, and financial harm. The consideration of the nature of the harm in determining whether there has been an Eligible Data Breach will be centred on whether the harm that is likely to result is "serious".

What must an affected organisation do?

Unless the organisation already knows, or there are reasonable grounds to believe that an Eligible Data Breach has occurred, the organisation must carry out an assessment in a reasonable and timely manner, to be completed by no later than 30 days from the date it became aware of the breach.

Once the organisation knows that the breach is likely to result in serious harm, it must prepare a statement to the OAIC as soon as practicable. The statement must disclose:

- The identity and contact details of the organisation
- A description of the breach that has occurred

- The kind or kinds of information concerned
- A recommended response plan that individuals should take in response to an Eligible Data Breach.

If the organisation has reasonable grounds to believe that the Eligible Data Breach of the organisation is an Eligible Data Breach of one or more other entities, the statement may also set out the identity and contact details of those other organisations. The organisation must take reasonable steps to notify the affected or at risk individuals by either:

- Communicating the statement to the relevant individuals (if practicable); or
- Publishing a copy of the statement on the organisation's website (if notification to the individuals by ordinary means is not possible or practicable) or taking alternative reasonable steps to publicise the statement so that it has some hope of reaching the relevant individuals.

Exceptions to the obligation to notify

In addition to other exceptions under the NDB Scheme relating to law enforcement activities and directions by the OAIC, if the organisation is able to take immediate action to rectify the breach so that there is no longer a real risk of serious harm to the relevant individuals, the Eligible Data Breach will be deemed to have never occurred. Examples of "quick fixes" that are envisaged by these provisions include freezing bank accounts where account details have been hacked, shutting down a server which has undergone an attempted

cyber security attack and ensuring that an unintended recipient of an email deletes that email.

Further, if another organisation who also looks after the data that has been compromised has already notified the OAIC and the affected individuals, the second organisation will be relieved of its notification duties without penalty.

Penalties

The maximum penalties for non-compliance with the NDB Scheme are \$1.7 million penalty for companies and \$340,000 for individuals and sole traders.

Be prepared for the NDB Scheme

The OAIC is in the process of developing specialised guidelines to assist organisations in complying with the NDB Scheme once it commences in 2018. In the meantime, clients should review the existing OAIC publications which provide practical guidance on what to do when a data breach occurs (see www.oaic.gov.au).

Clients who collect and store personal information in their businesses and fall within the ambit of the new NDB Scheme (and those who want to incorporate 'best practice' into their operations) should ensure that they:

- Prepare and implement a clear and effective data breach policy and response plan which can be actioned immediately. Often the steps taken in the first 24 hours after a serious data breach are the most significant in reducing a harmful impact. The data breach policy and response plan should be in writing, be

understood and accessible by all relevant personnel and include specific details of:

- key practical considerations relating to data breaches;
- the steps to be taken in the event of a suspected or actual data breach and how to identify when a matter is to be accelerated to a response team;
- the personnel who make up the response team and their contact details;
- the steps that the response team is expected to take; and
- sign off requirements to take these steps;
- Review information sharing practices with service providers and other entities and take steps to ensure co-operation and understanding of the data breach policy and response plan.
- Have reasonable security safeguards in place relating to the collection, use, storage and disclosure of data containing personal information.
- Have clear privacy policies and guidelines relating to the information lifecycle and ensure education relating to these procedures for all relevant personnel.
- Monitor and take proactive steps to defend against new security risks and threats.



JUDITH MILLER
Principal



LAURA TACHELL
Associate

The IP Perspective

with Chris Juhasz

I have always enjoyed M&M'S chocolates. Not just a delicious treat, I have found them to be an intellectual pleasure as well.

One of my favourite ads is the 'M&M'S Cupboard – Get in the Bowl' ad. To refresh your memory, in that advert, on opening a cupboard to get his love a snack, a fellow is subjected to a barrage of items thrown by lovable M&M'S characters, including 'Red' and 'Yellow', to defend themselves. Frustrated, he commands them to 'Get in the bowl'. To which they reply, 'You get in the bowl!'

Light hearted and quirky, the ad is entertaining and memorable. It is a distinctive piece of branding.

The role-play in this advert also provides an important lesson in leadership and shows the correlation between strong leadership and strong brand.

There can be a tendency for those in positions of power to assign the perhaps less pleasant or less rewarding aspects of their work to those with less power, whilst

'You get in the bowl!' *Red M&M*

retaining for themselves that work that is more pleasant or offers a higher reward.

In the ad, the less pleasant work is, of course, being eaten, whilst the more rewarding work is doing the eating.

As I'm sure many of you will agree, we all achieve greater outcomes when collaborating as a team – sharing the pleasant and not so pleasant tasks for the benefit of all. And that includes having your leader 'in the trenches' alongside you. In such an environment, no one needs or wants to say to the leader 'You get in the bowl' because they are already there, and were most likely there before anyone else.

If you look to any successful enterprise, you will find modern leaders embracing this philosophy. Let's face it – leaders who 'get in the bowl', so to speak, have greater impact, and much more loyal and engaged followers, than those who don't.

Take Oprah Winfrey and Sir Richard Branson, for example. It seems that for both of their entire lives they have been 'in the bowl', rolling up

their sleeves and leading the way in their respective endeavours. From this have flowed brands that would seem inseparable from them as leaders, and the impact they have each had on the world has been phenomenal.

So there you have it. Chocolate, branding, and leadership messages, all wrapped up in a delightful candy shell. What could be better than that!

Chris Juhasz is a Principal based in our Perth office. Chris specialises in patents across electrical and electronic engineering, computer technology, software, computer implemented inventions, mobile application technologies and business methods.

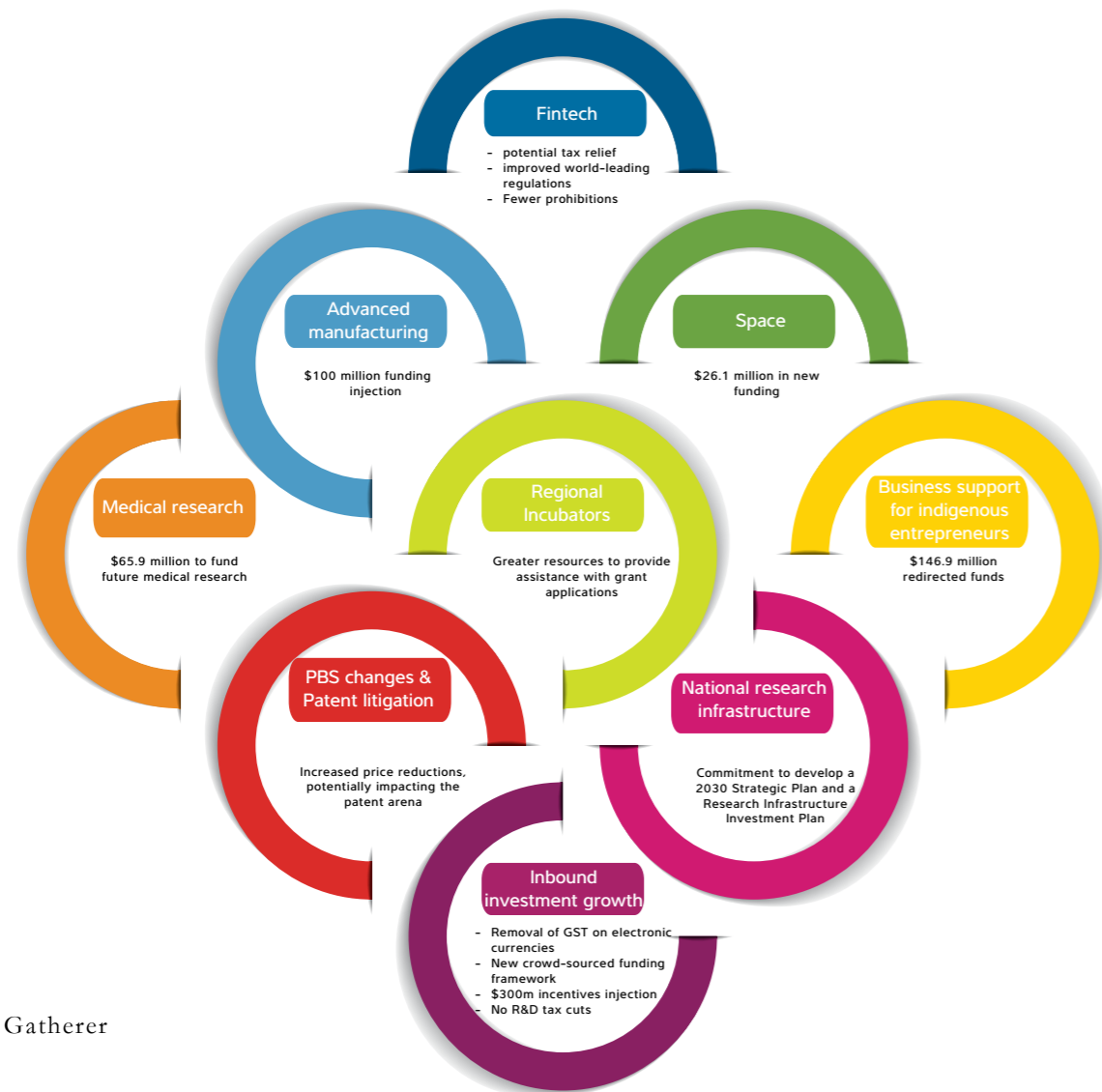


CHRIS JUHASZ
Principal

AUSTRALIAN FEDERAL BUDGET 2017

Impact on the Intellectual Property Landscape

Earlier this month Australia paused to dissect and digest the Federal Government's 2017/18 Budget – to gain an understanding of what it does, or doesn't deliver for Australia's future. For many there was great anticipation to discover what funding would be allocated to support Australia's vision to 'help create the modern, dynamic 21st Century economy Australia needs' – a vision led by the Government as part of its National Innovation and Science Agenda (NISA) released in December 2015.



The Budget did deliver some benefits towards the delivery of NISA and other initiatives which will positively impact the IP landscape in Australia, and some cutbacks anticipated with trepidation by the Australian innovation community failed to materialise. Whether these new measures, together with the other NISA initiatives, are able to achieve their long term objective – to launch Australia into a new era and culture of innovation – remains open to debate. For now, we provide a summary of the key new initiatives impacting the IP landscape.

FINTECH

One of the foci in the 2017 Budget (and indeed flagged in the 2016 Budget) was an increased investment in increasing Australia's fintech capability and attractiveness.

In the 2017 Budget this has resulted in a range of initiatives including:

- Potentially relaxing the 15 per cent ownership cap for innovative new entrants into the banking sector.
- Lifting the prohibition on the use of the term 'bank' by ADIs with less than \$50 million in capital.
- Introducing a world-leading legislative financial services regulatory 'sandbox' to enable new and innovative FinTech products and services to be tested in Australia without a licence (but with "robust consumer protections and disclosure requirements" etc in place).

If successful, the measures are posited to attract fintech innovators and investors to Australia by reducing regulatory hurdles which have traditionally suffocated new businesses trying to develop innovative financial products or services, and caused Australian talent go offshore.

ADVANCED MANUFACTURING

Just over \$100 million in new funding is allocated to boost innovation, skills and employment in advanced manufacturing to continue the transition to a new economy. The funds will be allocated to a range of initiatives including:

- \$47.5 million for a new Advanced Manufacturing Growth Fund, to help industry adjust to the wind-down of car manufacturing, to provide matched funds of up to a third of the project cost to South Australian and Victorian manufacturers for capital upgrades to make their businesses more competitive through innovative processes and equipment.
- \$4 million for the Advanced Manufacturing Growth Centre to support small scale and pilot research projects in advanced manufacturing, benefiting small firms and early stage researchers, allowing them to quickly move to larger scale research or commercialisation.

- \$20 million under the Cooperative Research Centre – Projects initiative for larger scale advanced manufacturing research projects of up to \$3 million in funding over three years.
- \$10 million to establish Innovation Labs in South Australia and Victoria to serve industry in a variety of roles including test centre facilities and business capability development, delivered through existing government services like Entrepreneurs' Programme, Industry Growth Centres and Austrade.
- \$5 million to maintain engineering excellence by investing in student research at universities, technology institutions and in industry to maintain the flow of highly trained engineers to the automotive design and engineering sector.
- Removing tariffs on imported vehicle prototypes and components used by Australian motor vehicle design and engineering services that operates in a global network.

“Unlike a mining boom, an innovation boom is a boom that can continue forever, ... limited only by our imagination.”

Prime Minister, Malcolm Turnbull

SPACE

In keeping with the increased global focus on ‘space’, \$26.1 million in new funding was earmarked for optical astronomical research and instrumentation development and a commitment for ongoing average annual funding of \$12 million, indexed, to 2027-28. This includes entering a 10-year strategic partnership with the European Southern Observatory (ESO) from 2018, although it also redirects \$12.6M of existing funding for the Australian Astronomical Observatory. Innovation Minister Sinodinos said that this “...offers Australia’s astronomers long-term access to front-line astronomical facilities, with opportunities for Australian influence and technical and scientific input, to stimulate research and industry collaboration.”

MEDICAL RESEARCH

The Government will provide \$65.9 million over four years from 2016-17 from the Medical Research Future Fund (MRFF) to invest in medical research in Australia, such as preventive health and translating research, clinical trials, accelerating research investments (CanTeen) and breakthrough research investments.

MRFF disbursements are expected to reach \$642.9 million by 2020-21 and will provide a sustainable funding stream for medical research.

Regional Incubator Support

The Government will refocus the existing Incubator Support element of the Entrepreneurs’ Programme to provide additional support for regional businesses. This will include additional regional incubator facilitators and provide grants to support the establishment of regional business incubators.

BUSINESS SUPPORT FOR INDIGENOUS ENTREPRENEURS

The Government will redirect \$146.9 million over four years from 2017-18 from Indigenous Business Australia to the Department of the Prime Minister and Cabinet to facilitate the delivery of innovative and effective support for Indigenous businesses and entrepreneurs including workshops, business planning and training, tailored loan products, and capital assistance for Indigenous entrepreneurs who would like to establish or grow their business.

PBS CHANGES & PATENT LITIGATION

The Budget announced changes to the current Pharmaceutical Benefits Scheme (PBS) statutory price reduction arrangements which are directed at improving access to affordable medicines. Although they are not implemented to foster innovation in Australia, they may nevertheless affect the IP landscape. Key changes, which may affect the way patentees of registered medicines litigate potential infringements, include:

- Extending the current 5 per cent reduction for Formulary 1 (F1) medicines by two years to 2022.
- Increasing the price reduction for medicines moving from F1 to Formulary 2 from 16 per cent to 25 per cent from 1 October 2018 until 30 June 2022.
- A one off 10 per cent statutory price reduction for F1 medicines listed on the PBS for 10-14 years, to commence on 1 June 2018, with subsequent reductions each year as medicines reach their 10 year anniversary, through to 2021.

- A one off 5 per cent statutory price reduction for F1 medicines listed on the PBS for 15 years or more to commence on 1 June 2018, with subsequent reductions each year as medicines reach their 15 year anniversary, through to 2021.

When the PBS price drop on generic entry increases from 16% to 25%, this will increase the potential quantum of liability to the Commonwealth for a patentee who obtains an interlocutory injunction preventing earlier generic entry. On the other hand it may arguably also strengthen that patentee’s ability to obtain an interlocutory injunction, as the loss to the patentee if the status quo is not maintained pending the outcome of infringement proceedings (and also the potential damages payable by an infringer) is greater.

For example, the Government has flagged as contingent assets in the Budget the compensation that it is seeking from three separate pharmaceutical patentees in respect of the drugs rosuvastatin, clopidogrel and venlafaxine.

The Government says that those companies were reimbursed for their respective drugs under the PBS at a higher price than they would have otherwise received were the first generic version of their respective drugs listed earlier. Presumably in these cases it is the Government’s position that but for the patents allegedly covering those drugs, the first generic would have listed sooner and the PBS price dropped sooner.

Another contingent asset is the money that CSIRO stands to receive if it succeeds in its ongoing patent infringement proceedings in the USA and Europe. The patents cover CSIRO’s invention of a wireless local area network.

NATIONAL RESEARCH INFRASTRUCTURE ROADMAP

The Government mentioned that it has commissioned a 2030 Strategic Plan and a Research Infrastructure Investment Plan to guide future investment in innovation, science and research. The Research Infrastructure Investment Plan will be informed by the 2016 National Research Infrastructure Roadmap (Roadmap).

The Roadmap was released at the same time as the Budget and has identified nine focus areas for infrastructure investment:

- Digital data and e research platforms
- Platforms for humanities arts and social sciences
- Characterisation (techniques for understanding the properties of materials)
- Advanced fabrication and manufacturing
- Advanced physics and astronomy
- Earth and environmental systems
- Complex biology
- Therapeutic development.

We will wait and see how this affects Government investment.

ATTRACTING INVESTMENT

Other measures aimed at making Australia a more attractive place to invest include:

- Removing GST from purchase of digital currencies (such as Bitcoin)
- A new framework to enable proprietary companies to obtain crowd-sourced equity funding (CSEF)
- \$300 million of funding over two years under the new National Partnership on Regulatory Reform to incentivise the States and local governments to lessen the regulatory burden on small businesses and remove other restrictions that hinder economic growth and competition

Happily for Australian innovation, the R&D tax incentive was not the subject of any cuts.

Time will tell whether these incentives and new frameworks, together with the raft of measures already in place to support delivery of the National Innovation Science Agenda, will be sufficient to stimulate an innovation boom, to lift Australia’s presence on the world innovation stage and drive further investment in Australian creativity and imagination.

For now, it appears that this budget delivers further steps in the right direction – toward that 21st century innovation economy that Australia needs.



TIM FRANCIS
Principal

AMAZON AU DECONSTRUCTED

The drums are beating in the sunburnt country

We are told we have one of the best retail industries in the world – competitive, aggressive and constantly delivering good value to the Australian consumer. Although the April 2017 Westpac Consumer Confidence Survey suggests a dip in confidence among Australian consumers.

Amazon is benefiting from the creation of FUD (fear, uncertainty, doubt) in the minds of our retail executives and expectations in the minds of the consumers. We now know when they will be in the market, the talk of drones and the like is a distraction. Amazon continue to dominate the media cycle and are benefiting from the coverage in that they don't need to buy the airtime and mindshare, it is being delivered for free by the media.

Amazon is universally labelled "the great disruptor", so let's turn to Disruption Theory to see whether it's helpful in deconstructing the strategy of Amazon as it eyes off the Australian retail prize.

As described in the critically acclaimed Innovators Manifesto by Michael E. Raynor, a theory is only useful if it can be used as a reasonable predictor of the future. Disruption theory can not only explain why some new businesses rapidly emerge and mature companies fall, it can actually help to predict the future success of new ventures more accurately. In this article we will step you through a deconstruction of the Amazon AU approach to see whether Disruption Theory can help us to better understand Amazon's likely strategy in the future.

Understanding Disruption Theory

An incorrect concept of Disruption has now firmly entered the public awareness, everyone is concerned about disruption, every start-up is a disruptor and every senior corporate executive is supposed to be working to ensure the business disrupts itself. The conversation around disruption is not so helpful when everyone has a different idea of what it is.

In a nutshell Disruptive Innovation predicts that market incumbents will continually pursue sustaining innovations to meet growing high end customer needs. In this process they create the situation where low end customers are highly over served. This allows new entrants to compete for low end customers who do not require the highest performance on the basis of convenience and price. The incumbents, if they see this competition at all, see it in their lowest margin customers and view it as little threat so they leave it alone. Using new technologies and reach, the new entrants improve their product rapidly and grow market share at a pace that means they eventually over take the incumbent. So if that is what disruption is, let's run the ruler over Amazon AU.

The disruptors approach is typically asymmetrical, or unfair. In this case if Amazon is fighting by different rules and in this fight the incumbents' strengths are not useful, then it may indeed be a disruptor. However Australian retailers have well respected brands, efficient distribution and have traditionally provided convenient access.

The main test of asymmetry is to see whether Amazon's entry is ignored or welcomed by the incumbents. At this stage you could hardly say that Amazon is being ignored, we have heard it called the "retail death star", it is reasonable to expect that the incumbent Australian retailers will react aggressively to Amazon's arrival in Australia.

Another reason, according to the theory, that incumbents may allow Amazon to build a beach head is that they see the Amazon consumer as undesirable, i.e. Amazon can make money in a way that would cause the incumbents to lose money.

In this case, we can view Amazon as a "low end disruptor" where it enters the market with a cheaper product that seems to perform poorly, has low margins and the incumbents accept this because they are chasing the higher margin customers. We would argue that Amazon can be seen to have potentially lower costs and accepts lower profit margins and makes money in new ways however its service and convenience promise is not low quality.

In an alternative view a "new market disruptor" doesn't cause any pain to the incumbent because they draw new customers into the market so the incumbents don't feel the difference and ignore it, there is an asymmetry in cost structure. In this approach, Amazon will gain a foothold and grow rapidly from there and capture increasingly larger parts of the market. Here the asymmetry is on the basis of competition and the measurement of performance. By growing and fulfilling unmet needs in the market they grow the overall pie. It looks like Amazon measures its performance in different ways and is prepared to play a much longer term game, Alibaba is similar.

Retail shake-up

Against any measure, Amazon is going to shake up the retail environment. It's prepared to make longer term loss making market entries, its share price, balance sheet and proprietary IP allow it to offer a unique and trusted service to the Australian retail consumer. While the incumbents will not like it, aggressive price competition and low cost service is not in itself aligned with "disruption theory" it's just good old aggressive business.

So is Amazon any different from Aldi? The incumbents need to respond to this new market entrant and the Australian consumer is likely to be beneficiary and won't mind the "disruption".



JONATHON WOLFE

Director
Wrays Solutions

WHAT'S ON 2017

CALENDAR OF EVENTS

JUNE

1st - 2nd

AMP Amplify
MELBOURNE, AUS

1st

TTBC Women in Innovation
Jodie Fox, Shoes of Prey
SYDNEY, AUS

1 - 4th July

Curtin Ignition Program
Information sessions
CURTIN UNIVERSITY, AUS

5 - 7th

AMP Amplify
SYDNEY, AUS

6th

WA Innovator of the Year –
applications close
PERTH, AUS

7th

CEDA: Securing WA's energy
future through innovation
Dr Anthony Marxsen
PERTH, AUS

13th

AICC Smart Disruption in the
Digital Age Panel with Paul Bassat,
Tracey Fellows and John Paitaridis
MELBOURNE, AUS

14th

Innovation Bay Breakfast with
Paul Bennetts, Spaceship
SYDNEY, AUS

14th

AICC Cisco Technology Series with
Ben van Delden
PERTH, AUS

15th

Innovation Bay Breakfast with
Craig Blair, Airtree Ventures,
Kara Frederick, Reinventure
Paul Bassat, Square Peg Capital
MELBOURNE, AUS

19th

BIO International Convention
SAN DIEGO, USA

20th

Ausbiotech PharmaMedtech
Stories
Panel with Prof Mark Kendell,
Dr Michael Thurn, Andrew Batty
and Lusia Guthrie
MELBOURNE, AUS

21st

Innovation Bay Breakfast with
Grant Bissett, Pin Payments
PERTH, AUS

23rd

CEDA: Organisational risk in an era
of cyber threats
Alastair MacGibbon
SYDNEY, AUS

27th

LESANZ / RIG – Getting your
innovation adopted in the
resources sector
PERTH, AUS

29th

CEDA: Healthcare Innovation
Rohan Mead & Michael Welsh
VICTORIA, AUS

JULY

20th

Ausbiotech BioBeers and Bubbles
SYDNEY, AUS

24th

AICC Collaboration in the Age of
Innovation
Prof David Wilkinson and Jan
Janssen
SYDNEY, AUS

AUGUST

8th

AICC with Dr Larry Marshall, Chief
Executive CSIRO
SYDNEY, AUS

10 - 11th

WA Innovator of the Year – Pitch
Presentations
PERTH, AUS

13-18th

Curtin Ignition Program
PERTH, WA

29th

Ausbiotech's AusAg & Foodtech
Summit
ADELAIDE, AUS

30th

AICC 'Fit for Change' the
importance of organisational
culture in this new era of
transformation
Steven Worrall, Microsoft
SYDNEY, AUS

SEPTEMBER

5th

AICC Harnessing Science and
Innovation for Business Success
Dr Alan Finkel
SYDNEY, AUS

13th

WA Innovator of the Year – Finalist
Presentations
PERTH, AUS

WRAYS

www.wrays.com.au

protect | grow | defend

