

**Australian Centre for Intellectual  
Property in Agriculture**

**Annual Report  
2003**

### **Australian Centre for Intellectual Property in Agriculture**

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# Contents

DIRECTOR'S REPORT .....	1
STRUCTURE AND OPERATION .....	3
RESEARCH .....	4
POLICY .....	15
POSTGRADUATE EDUCATION .....	17
TRAINING .....	18
EVENTS .....	19
VISITORS .....	21



## ➔ DIRECTOR'S REPORT

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2003 marked the third year of the Centre's operations. Building upon the work of previous years, the main focus of the Centre this year was the consolidation of existing activities, as well as preparations for future expansion. In January 2003, the Centre welcomed Michael Handler as RIRDC Research Fellow. The Centre also welcomed Dr Charles Lawson in February 2003, who was appointed as a Research Fellow.

During the course of the year ACIPA made a number of important contributions to rural intellectual property policy debates in Australia. A highlight was the establishment of the *ACIPA Intellectual Property and Agriculture Symposia*. The inaugural symposium, which was held in Canberra on 18 September 2003, was the first in a series of events that will explore intellectual property issues facing the rural sector in Australia. The symposium was declared a huge success with 75 people attending from Government departments, Research and Development Corporations, plant biotechnology organisations, seed companies and growers. The event was opened by The Hon Judith Troeth, Senator for Victoria, Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry.

In 2003, ACIPA launched a series of intellectual property training programs for growers, agricultural researchers and research managers. The aim of these programs is to improve understanding and awareness of intellectual property amongst growers, RDC's, research institutions and the rural community more generally. Pilot courses were run in 2003, which will lay the foundation for future training courses to be held throughout rural Australia. As part of its public education, the Centre held two conferences in 2003 and hosted over 25 seminars in Canberra and Brisbane. Both the conferences and the seminars were delivered to wide ranging audiences.

As the list of publications, conference presentations, and media engagements listed in the Annual Report show, ACIPA staff had a very productive year. Substantial progress was also made on all of ACIPA's research projects. This is particularly important given that our research plays such a crucial role in underpinning our training, education, and policy work. The core GRDC funding has also allowed ACIPA to lever additional funds to further the activities of the Centre, and thus the benefits offered to the growers and the rural sector more generally. As part of this process, the Centre was awarded three Australian Research Council (ARC) grants in 2003, bringing the total number of ARC grants held by the Centre to six.

I would like to take this opportunity to extend our thanks to the many individuals and organisations who have helped to make 2003 such a success for the Centre. In particular, I would like to thank the Grains Research and Development Corporation (GRDC), the Australian Research Council (ARC), the Rural Industries Research and Development Corporation (RIRDC), The Australian National University, and Griffith University for their ongoing support. I would also like to thank the Plant Breeder's Rights Office, IP Australia, and the Australian Institute for Commercialisation (AIC) for their assistance with our ARC Linkage projects.

Finally, I would like to thank ACIPA's Advisory Board for their guidance over the past twelve months. It is unfortunate for the Centre that Professor John Lovett, who was the GRDC representative on the Board, resigned from our Advisory Board due to his departure from GRDC as Managing Director. Ms Anne Trimmer, who was the Chair of the Board, also resigned due to her relocation to Sydney. Their participation on the board was significant and they will both be greatly missed.

*Professor Brad Sherman  
Director*

## ➔ STRUCTURE AND OPERATION

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### **Directorate**

*Director:* Professor Brad Sherman, Griffith University  
*Associate Director* Mr Robert Burrell, The Australian National University

### **Administrative**

*Manager:* Ms Carol Ballard, Griffith University  
*Administrator:* Mrs Vera Joveska, The Australian National University

### **Academic**

*Research Fellows:* Mr Michael Handler, The Australian National University  
Mr Stephen Hubicki, Griffith University  
Dr Charles Lawson, Griffith University  
Dr Matthew Rimmer, The Australian National University  
Mr Antony Taubman, The Australian National University

*Adjunct  
Research Fellows:* Professor Lionel Bentley, King's College London  
Dr Justin Malbon, Griffith University  
Ms Leanne Wiseman, Queensland University of Technology

### **ACIPA Advisory Committee**

Ms Anne Trimmer (Chair), Partner, Minter Ellison Lawyers  
Emeritus Professor John Lovett, Director, Grains Research and Development Corporation  
Professor Brad Sherman, Director, Australian Centre for Intellectual Property in Agriculture, Griffith University  
Professor Michael Coper, Dean, Faculty of Law, The Australian National University  
Dr Cliff Samson, General Manager, Field Crops, Australian Government Department of Agriculture, Fisheries and Forestry  
Dr Ted Maddess, Senior Fellow, Research School of Biological Sciences, The Australian National University  
Professor John Dewar, Pro-Vice Chancellor (Business & Law), Griffith University  
Mr Robert Burrell, Associate Director, Australian Centre for Intellectual Property in Agriculture, The Australian National University

## ➔ RESEARCH

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Research forms a core part of ACIPA's activities. In particular, it underpins, shapes and directs our education, training and policy work. In undertaking research on all areas of intellectual property, our aim is to produce high quality research focusing on intellectual property and agriculture, and to highlight the unique and distinctive intellectual property issues that arise in the agricultural sector.

### Profiles of Researchers

**Robert Burrell** started at ACIPA in January 2001. Robert is currently Associate Director of ACIPA and in charge of ACIPA's Postgraduate Education. In 2003, Robert worked with Michael Handler to deliver the ACIPA Intellectual Property Training seminars to various Research and Development Corporations, government agencies, and research managers. Robert is currently completing a book on intellectual property exceptions for publication in 2004.

**Michael Handler** joined ACIPA as the RIRDC Research Fellow in January 2003. Michael is the co-ordinator of ACIPA's Intellectual Property Training Programs. Over the course of 2003 he helped to co-ordinate and deliver detailed intellectual property training seminars to various Research and Development Corporations, government agencies, research managers, scientists and growers. The major aspect of this program was a detailed, 15-hour program over the course of 5 months, covering all aspects of intellectual property law as well as issues of management and liability. Michael was also involved in delivering short, one-day sessions for Land and Water Australia (Canberra, March 2003) and for the Grains Research and Development Corporation (Canberra, March 2003 and September 2003), as well as general training sessions to Queensland Government agencies and research managers (Brisbane, July 2003 and Toowoomba, October 2003, the latter being part of ACIPA's ARC funded project "Intellectual Property and the Rural Sector: Harvesting the Benefits of Science and Technology").

As part of his role as the RIRDC Research Fellow at ACIPA, Michael liaised closely with senior staff from RIRDC in 2003. He has assisted RIRDC by jointly developing detailed Intellectual Property Management and Commercialisation guidelines over the course of 2003, by providing advice to General Managers of Research at RIRDC on intellectual property issues affecting research projects and outcomes to senior managers throughout 2003, and through the provision of a series of training seminars in Canberra (from April 2003 to August 2003) outlined above. He also attended the first RIRDC Board Subcommittee on Intellectual Property and Commercialisation in May 2003, where it was agreed that he would provide advice to the Subcommittee on issues relating to Intellectual Property Management as requested.

In 2003, Michael completed a research project on copyright exceptions, culminating in the publication of two articles (on which he gave two

seminars in Brisbane and Canberra). Michael's current major research interest is international comparative trade mark law, with a focus on agricultural branding. As a first part of this project, Michael had an article, co-authored with Robert Burrell, published in the *Intellectual Property Quarterly* on the requirement of graphic representation in trade mark law. He is also working on a long-term project on national and international aspects of the law of geographical indications of origin, and hopes to have a first article on this topic published in 2004.

Michael developed, convened and taught a new course for ACIPA's Master of Laws in Intellectual Property in October 2003 titled "Intellectual Property Management and Commercialisation". He also assisted Robert Burrell in developing and teaching a new LLM course in April 2003 titled "Trade Mark Law and Related Rights". He also taught part of the "Principles of Intellectual Property" course in March 2003.

**Stephen Hubicki** joined ACIPA as a Research Fellow in July 2002. From the time of his commencement until February 2003, he was engaged with Brad Sherman to formulate hypothetical scenarios for access to genetic resources in Commonwealth areas together with model benefit-sharing agreements. This project was commissioned by Environment Australia and the agreements will be annexed to the *Environment Protection and Biodiversity Conservation Regulations 2001* (Cth), which implements, among other things, Australia's obligations under the Convention of Biological Diversity.

Upon completion of this project, Stephen instigated research examining the history of, and justifications for, *per se* (or product) claims to chemical inventions. The issue of *per se* claims to chemical compounds has risen to prominence in contemporary debates about gene patenting as a consequence of the decision of patent granting bodies to examine claims to genes and gene products in a like manner to ordinary chemical compounds (a practice that has subsequently been approved by the courts). This has evoked considerable controversy because the effect of such claims is to confer "absolute protection" over the patented compound, which prevents third parties from making or using the patented compound for any purpose whatsoever (even those beyond the inventor's contemplation). The doctrine of absolute protection appears increasingly difficult to justify given the growing evidence that many if not most genes and gene products are "promiscuous" – they have more than one function within an organism – and the increasingly routine nature of identification of genes and gene products. In this research, Stephen has consulted case law from the late 18<sup>th</sup> century onwards, bills and parliamentary debates from the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, and jurisprudence from the United Kingdom, the United States, Canada, and Germany.

Stephen's research into the history of and justifications for product claims to chemical inventions has fed directly into another area of his research which looks at the development of the concept of novelty in modern patent law, particularly in the European Patent Office. The development of the law of novelty in the EPO in the past 15 years has been marked by an increased emphasis on the function of the claimed invention, particularly in the field of chemical and pharmaceutical inventions. In contrast, the traditional approach to the question of novelty in common law systems has tended to focus entirely upon the physical characteristics of the invention – its purpose or function was considered irrelevant. This research examines the ramifications of this change in approach.

Another closely allied focus of Stephen's research in 2003 has been a critical examination of the recent evolution of the utility requirement in patent law; in particular, the practice of patent granting bodies to accept statements of the biological function of a gene in satisfaction of the utility/industrial applicability requirement. The effect of this approach has been to extend the ambit of patent law to the protection of scientific knowledge without immediate industrial applicability. This research analyses the function of the utility requirement in patent law and how this is presently being distorted by this practice.

In addition to his individual research projects, Stephen is also working in collaboration with Dr Charles Lawson looking at the implications of the litigation relating to Amgen's patent over erythropoietin. That litigation was the first of its kind to consider in detail issues relating to the patentability of genes. This research looks at the implications for gene patenting arising from these decisions. Stephen is also an investigator of the ARC Discovery Project, "Gene Patents in Australia: Options for Reform", with Prof Brad Sherman, Dr Matthew Rimmer, and Dr Charles Lawson.

In addition to his research activities, Stephen also assumed the role of Convenor of the "Patent Law and Related Rights" subject within the Master of Laws in Intellectual Property Law program in 2003. Stephen re-wrote the curriculum for the subject in accordance with the requirements of the Standards Board for Patent and Trade Mark Attorneys. The re-designed curriculum will be submitted to the Board for approval in 2004 and, if accredited, candidates will upon successful completion of the subject be entitled to registration as an Australian Patent Attorney.

**Dr Charles Lawson** was appointed as a Research Fellow in the Centre in 2003. Charles came to the Centre from the Commonwealth Department of Finance and Administration. From his appointment he has primarily been engaged in research, although he also contributes to teaching and some of the other activities of the Centre.

Charles' major focus in 2003 was examining the negotiating history and final text of the *International Treaty on Plant Genetic Resources for Food and Agriculture* and its impact in Australia. The broad reaching effect of this treaty has been to establish a binding and uniform arrangement for access to certain agriculturally important germplasm, although the scope of germplasm is limited and intellectual property right over those materials remain controversial. This work is to be published in the *Federal Law Review* and the *Australian Journal of Agricultural Research*.

Related to this work Charles has undertaken a project examining the adequacy of the description requirements of living organism inventions. The first part of this work is to be published in the *Journal of Law and Medicine* concerning the "sufficiency" requirements where the living organism is described through deposit according to the *Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure*. The remaining part of this project is examining the Australian law applying to the construction of claims to living organism inventions. It is expected this work will be completed in 2004.

In other related work Charles is also working in collaboration with Stephen Hubicki examining the implications of the litigation relating to Amgen's patent over erythropoietin. That litigation was the first of its kind to consider in detail issues relating to the patentability of genes in Australia leaving many of the controversial issues about gene patenting unresolved. This work looks at the implications for gene patenting arising from these decisions.

In 2003 Charles, together with Justin Malbon (an Adjunct Research Fellow with the Centre) and Mark Davison (from Monash University) were awarded an ARC Discovery grant to develop a systematic, inclusive and just jurisprudential account of TRIPs. While work on this project is still in its very early stages, some of the background analysis has been undertaken. The early result is a publication in the *Australian Intellectual Property Journal* examining the "flexibility" in TRIPs for using patented inventions without the authorisation of the right's holder. This work will continue.

Charles has also undertaken work dealing with the financial frameworks of the Commonwealth. While this work may not be directly applicable to the content of intellectual property, the effects of the Commonwealth's framework extend to intellectual property issues and the bodies dealing with important intellectual property generating activities (such as funding agricultural R&D). To this end, Charles has undertaken a systematic analysis of the Constitution's financial clauses and their application to Special Accounts. These measures are significant as the Commonwealth often has no other means of collecting and then appropriating money collected through industry levies, and so on. As part of this work Charles has also examined the recent Australian National Audit Office performance audit of Commonwealth intellectual property policies and practices. This work has been submitted for publication.

Charles contributed to several of the courses conducted by the Centre. This included the Principles, Selected Topics, Patent Law and Commercialisation subjects. He presented seminars in the Centre's seminar program in Brisbane and Canberra and presented a talk at the annual Centre's Patent Conference in Canberra. He has also assisted with the ARC Discovery Project, "Gene Patents in Australia: Options for Reform" preparing submissions to the Australian Law Reform Commission inquiry into gene patenting and human health.

**Dr Matthew Rimmer** had a prolific year in 2003 - writing two editorials, eight refereed articles, seven case notes, and two book reviews. He sought to communicate that research to a wide audience - writing several policy submissions, presenting nineteen lectures, and performing a number of media engagements.

Matthew was chief investigator in the Australian Research Council Discovery Project, "Gene Patents in Australia: Options for Reform". He has published a number of refereed articles in this field. This included: "Genentech and the Stolen Gene: Patent Law and Pioneer Inventions" published in *Bio-science Law Review*; "Myriad Genetics: Patent Law and Genetic Testing" published in *European Intellectual Property Review*; "Beyond Blue Gene: Intellectual Property and Bioinformatics", accepted for publication in *International Review of Industrial Property and Copyright Law*; and forthcoming "The Attack of the Clones: Patent Law and Stem

Cell Research”, in the *Journal of Law and Medicine*. An editorial on scientific publishing was also published in *Australasian Science*.

Matthew was chief investigator in an ARC linkage project, “The Protection of Botanical Innovations”. He has published two articles in this field. This included: “Franklin Barley: Patent Law and Plant Breeders' Rights”, in the *Murdoch University Electronic Journal of Law*; and “Blame It On Rio: Biodiversity, Native Title, and Intellectual Property” in the *Southern Cross University Law Review*. Matthew is currently working on a comprehensive summary of the plant breeders' rights legislation in Australia.

Matthew has also begun empirical research into the impact of gene patents upon researchers and scientists. He has engaged in a dialogue with scientists and business managers from CSIRO, the Institute of Molecular Biology, The University of Queensland, the Walter and Eliza Hall of Medical Research, the Peter MacCallum Cancer Institute, the National Health and Medical Research Council, and the British Columbia Cancer Agency. He was also invited to participate in the annual Stem Cell Summit. Matthew also published a number of articles of a range of intellectual property related topics.

Matthew was invited to present a paper on intellectual property at the University of Ottawa in Canada, and was invited to write an editorial for the on-line journal, *Open Democracy*. Matthew was the convenor of the Canberra seminar program and the conference, “Intellectual Property and the Life Sciences: Agriculture, Health and Trade”, held in Canberra. Matthew lectured in “Principles of Intellectual Property” and “Copyright Law and Related Rights” as part of ACIPA’s Intellectual Property Postgraduate Program.

**Professor Brad Sherman** undertook a variety of different tasks in 2003. As well as his general managerial responsibilities for the Centre, Brad also helped to establish the inaugural *ACIPA Intellectual Property and Agriculture Policy Symposium*. He also worked with colleagues to plan for future symposia. During the course of the year, Brad continued to undertake research on the history of intellectual property and agriculture (focusing on biological innovation). This is a broad ranging project that will attempt to unpack many of the assumptions that underpin the way we currently think about intellectual property as it pertains to agriculture. As part of this project, articles on biodiscovery and the problems created by the living nature of biological inventions were published. Brad also completed, with Lionel Bently, the second edition of “Intellectual Property Law”, which will be published in 2004. As well as working on the long term history project, Brad is also working on genetic use restriction technologies, and attempting to rethink the way the ‘genetic commons’ is perceived. He is also working with colleagues in implementing the training programs.

**Antony Taubman** joined ACIPA as a Senior Lecturer in 2001, and was formerly Director of the International Intellectual Property Section within the Department of Foreign Affairs and Trade (DFAT). In May 2002, he was seconded to the World Intellectual Property Organization (WIPO), in Geneva, Switzerland, to head the Global Issues (now Traditional Knowledge) Division. This position concerns the development of new international legal and policy approaches to the regulation of traditional knowledge and cultural expressions (‘folklore’), and the concerns of

indigenous and local communities relating to the intellectual property system, and the role of intellectual property in relation to equitable benefit sharing resulting from access to genetic resources. In this position, he wrote or co-authored a number of path-breaking policy documents and analyses in this field, seeking to reconcile core principles of intellectual property law with the concerns, interests and cultural perspectives of traditional knowledge holders and custodians of genetic resources, within the practical context of international policy debate on intellectual property. He is also responsible for the development of international policy approaches on intellectual property relating to the life sciences, including agricultural biotechnology, biological and genetic resources, and public health and pharmaceuticals.

In the course of 2003, he presented numerous papers on these issues to international seminars and conferences in Isfahan, Cochin, Moscow, Geneva, Singapore, Kampala, Bandung, Beijing, Doha, Ottawa and Cairo. He maintains a practical involvement in international patent law, practice and administration; the law and international political economy of geographical indications; and the practice of international intellectual property law, in particular the emerging jurisprudence of TRIPS.

In 2003 Antony presented papers to conferences at Duke Law School, North Carolina ('International Public Goods and Transfer of Technology under a Globalized Intellectual Property Regime'), Center for Advanced Study and Research on Intellectual Property, University of Washington, Seattle ('High Technology Summit'), and the National University of Singapore ('Intellectual Property and Biological Resources Conference'), as well as ad hoc lectures and seminars, including two contributions to the ACIPA seminar series. He wrote the curriculum for and taught the "International Intellectual Property Law" subject within the ACIPA Master of Laws in Intellectual Property Law program, and took an active role in the ANU School of Law's Geneva academic program in international law.

## **RESEARCH PROJECTS**

### **Intellectual Property and the Rural Sector: Harvesting the Benefits of Science and Technology**

Recent developments in agribusiness and biotechnology promise benefits for the rural sector. However, there has been little research into the intellectual property needs and expectations of the sector, a crucial aspect of the innovation process. This hampers policy debate, the development of effective commercialisation strategies, and undermines the effectiveness of intellectual property education. This project, the first of its kind, addresses these problems by ascertaining the intellectual property needs of rural Australia, through empirical research into policy, education and commercialisation, and provides an understanding essential to support the economic and social development of rural communities.

### **Gene Patents in Australia: Options for Reform**

There has been vigorous public debate in Europe and the US over the patenting of genes and gene sequences. The Human Genome Project has highlighted some of the issues surrounding the commercialisation of knowledge gained through such applied research. In particular, concerns have been expressed that patent monopolies and the costs associated with licensing fees may reduce access to genetic testing. This project will look

at the important issue of intellectual property protection for genetic material. As well as looking at the status of patent protection for gene patenting in Australia, the project will look at issues raised by Myriad Genetics gene patents in relation to breast cancer (BRCA1 and BRCA2); which have fundamental ramifications for the delivery of health care in Australia. It will also look at the lessons to be drawn from the opposition proceedings underway in Europe challenging the validity of the patents such as those issued to Myriad Genetics.

### **Protection of Botanical Innovation: A Legal Analysis of the Scope and Operation of National and International Plant Breeder's Rights**

This project will investigate the interaction between plant breeder's rights and other areas of intellectual property: such as patent law, trade mark law, and confidential information. It will also investigate the relationship between the UPOV Convention, TRIPs, the Convention on Biological Diversity, and the FAO Undertaking on Plant Genetic Resources. The project will examine the unique features of the system of plant breeder's rights and consider the role played by the doctrine of essential derivation in drawing a line between traditional agriculture and biotechnology. It will evaluate the exceptions provided under the system of plant breeder's rights - such as the farmer's privilege, and the guarantees of reasonable public access to plant varieties. The project will also consider the commercialisation of plant breeder's rights. It will examine the history of negotiations between public research organisations and private agricultural companies over the ownership and exploitation of rights. It will also focus upon the role played by seed banks and herbariums as natural libraries of plant varieties.

### **Public Sector Research and Intellectual Property**

In recent years, increased attention has been given to the nature and role that intellectual property law plays in relation to publicly funded research. This has given rise to questions about the extent to which such institutions should protect research via intellectual property, and the impact that this may have upon the research culture. Similarly, questions have arisen about the best way for institutions to proceed when they wish to place research in the public domain. For the most part, these discussions have taken place in a research vacuum. This project will attempt to remedy this problem.

### **Biodiscovery and Access to Genetic Resources**

This project will consider the interaction between currently recognised intellectual property rights and the conservation and exploitation of genetic resources, both in situ and in germplasm collections. This involves reviewing the international legal mechanisms that have been developed (notably in the FAO and the CBD), and ongoing negotiations concerning their development and implementation, as well as policy development undertaken by other agencies such as WIPO and UNESCO concerning intellectual property rights, access to genetic resources and traditional knowledge. It will consider the policy options at a domestic level, and the implications for resource management, as well as the practical legal tools that are available to custodians or collections of genetic resources.

### **International Intellectual Property**

This project will concentrate on the legal and policy consequences of intellectual property rights forming part of the international trade rules system, through the incorporation of the TRIPS Agreement within the World Trade Organization package of agreements. It will consider the conception of intellectual property in the international trading environment, its role in multilateral and regional agreements on trade and related matters, the interaction between TRIPS and other international legal instruments, and the development of TRIPS dispute-settlement jurisprudence.

### **Access to Scientific Information**

This project will examine the impact of intellectual property law upon the flow and exchange of scientific information. More specifically, it will consider the impact that patent law, copyright law, contract and database protection have upon scientific research. The project team will draw upon history of the scientific publishing as well as recent events such as the public library of science and digital archives as a way of ensuring public access to scientific information.

### **Biological Property**

This project takes as its starting point the belief that the history of intellectual property law can teach us a lot about many of the issues that confronts contemporary legal system. The project will explore the impetus for, and the problems encountered when intellectual property law first began to consider whether protection should be extended to living matter. The scope of the project will include case studies on the US Plant Patent Act of 1930, UPOV, and the process by which plants were protected under Australian law.

### **Legal Recognition and Protection of Traditional Knowledge**

This program will analyse the policy debate and specific negotiations concerning the protection of traditional knowledge, both within the existing national and international framework of intellectual property rights and in parallel forms. It will assess the implications of these developments for Australian policymakers and for the Australian legal and policy environment, and explore the possibilities within the Australian legal system for recognition and protection of traditional knowledge. The program will review the implications of strengthened international recognition of traditional knowledge for Australia's rural industries, in particular, access to plant varieties and related germplasm, and continuing access to export markets.

## **PUBLICATIONS**

- Burrell, R., 'Copyright and Freedom of Political Communication in Australia' forthcoming in J. Griffiths and U. Suthersanen (eds.), *Copyright and Freedom of Expression: International and Comparative Perspectives* (Oxford: Oxford University Press, 2004) (with J. Stellios)
- Burrell, R., 'Making Sense of Trade Mark Law' (2003) *Intellectual Property Quarterly*, pp. 388-410 (with M. Handler)

- Burrell, R., 'Fair Dealing and Freedom of Expression in the United Kingdom' (2003) 14 *Australian Intellectual Property Journal*, pp. 45-64 (with J. Stellios)
- Burrell, R., Book review: 'Monotti and Ricketson, 'Universities and Intellectual Property: Ownership and Exploitation'' (2003) 31(2) *Federal Law Review*, pp. 409-413
- Handler, M., 'Making Sense of Trade Mark Law' (2003) *Intellectual Property Quarterly*, pp. 388-410 (with R. Burrell)
- Handler, M., 'Before the High Court: *The Panel Case* and Television Broadcast Copyright' (2003) 25 *Sydney Law Review*, pp. 391-408
- Handler, M., "'A Real Pea Souper": *The Panel Case* and the Development of the Fair Dealing Defences to Copyright Infringement in Australia' (2003) 27 *Melbourne University Law Review* 381-422 (with D. Rolph)
- Hubicki, S., 'The Concept of Absolute Protection in Patent Law' (forthcoming)
- Hubicki, S., 'The Modern Law of Novelty after *Mobil*' (forthcoming)
- Lawson, C., 'Patents and the CGIAR System of International Agricultural Research Centres' Germplasm Collections Under the International Treaty on Plant Genetic Resources for Food and Agriculture' (2004) *Australian Journal of Agricultural Research*, forthcoming (accepted 18 December 2003)
- Lawson, C., "'Sufficiency" for Living Organism Inventions Under the Patents Act 1990 (Cth)' (2004) *Journal of Law and Medicine*, forthcoming (accepted 15 December 2003)
- Lawson, C., 'Patents and Plant Breeder's Rights Over Plant Genetic Resources for Food and Agriculture' (2004) *Federal Law Review*, forthcoming (accepted 12 December 2003)
- Lawson, C., 'Patenting Genetic Materials: Unresolved Issues and Promoting Competition in Biotechnology' (2004) *Journal of Economic Policy*, forthcoming (accepted 24 June 2003)
- Rimmer, M., 'Blame it on Rio: Biodiscovery, Native Title, and Traditional Knowledge', (2003) 7 *The Southern Cross University Law Review* (forthcoming)
- Rimmer, M., 'Franklin Barley: Patent Law and Plant Breeders' Rights', (2003) 10(4) *Murdoch University Electronic Journal of Law*: <http://www.murdoch.edu.au/elaw/issues/v10n4/rimmer104.html>
- Rimmer, M., 'The Attack of the Clones: Patent Law and Stem Cell Research' (2003) 10 *Journal Of Law And Medicine*, pp. 488-505
- Rimmer, M., 'Virtual Countries: Internet Domain Names and Geographical Terms' (2003) 106 *Media International Australia incorporating Culture and Policy*, pp. 124-136
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- Rimmer, M., 'Myriad Genetics: Patent Law and Genetic Testing', (2003) *European Intellectual Property Review*, pp. 20-33
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- Rimmer, M., 'The Legal Helix' in 'Copyrighting The Genome: Database Owners Stifle Gene Research', (2003) 24(7) *Australasian Science*, pp. 20-22

- Rimmer, M., 'The Genie's Revenge', *Open Democracy*, 18 December 2003, <http://www.opendemocracy.net/debates/debate-8-101.jsp>
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- Rimmer, M., Book Review: 'Information Feudalism: Who Owns the Knowledge Economy. A Book Review', *Prometheus*, 2003, Vol. 21, No. 1, pp. 127-132
- Rimmer, M., 'The Great Library: Copyright Law and Access to Justice' (December 2003) 24(12) *Incite*, <http://www.alia.org.au/publishing/incite/2003/12/great.library.html>
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- Sherman, B., 'The Making of Modern Intellectual Property Law' (Obeikan Publishers, Riyadh, Arabic Translation, 2003), 352 pp. (with L. Bently)
- Sherman, B., 'Intellectual Property Law' 2<sup>nd</sup> ed. forthcoming (Oxford University Press, 2004) c. 1,200 pp. (with L. Bently)
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- Sherman, B., 'Biological Inventions and the problem of passive infringement' in C. Heath and A Kamperman Sanders (eds.), *Industrial Property in the Biomedical Age* (The Hague: Kluwer, 2003), pp. 105-115
- Sherman, B., 'Copyright Law in Australia', in P. Geller (ed.), *International Copyright law and Practice* (New York: Bender, 2003), 112 pp
- Taubman, A., 'TRIPS Goes East: China's Interests and International Trade in Intellectual Property', in D. Cass, B. Williams and G. Barker (eds.), *China and the World Trade System: Entering the New Millennium*, Cambridge University Press (2003), pp. 345-362

## Presentations by ACIPA Staff

- Burrell, R., *Conceptions of Rights*, guest lecture delivered at the University of Glasgow, December, 2003
- Burrell, R., *Guest Lecturer in Intellectual Property* for the University of Cambridge's European Law Program in Warsaw, November 2003
- Burrell, R., *Fair Dealing and Freedom of Expression in the United Kingdom*, ACIPA Copyright Conference, Brisbane, February 2003
- Lawson, C., *Food and Agriculture Organization Agreement on Plant Genetic Resources*, ACIPA Annual Canberra Conference, November 2003
- Rimmer, M., *Kazaa: Copyright Law, The Digital Agenda, and Free Trade*, Tory's Technology Law Speaker Series, University of Ottawa, October 2003
- Rimmer, M., *Myriad Genetics: Patent Law and Genetic Testing*, University of Ottawa, 20 October 2003
- Rimmer, M., *Franklin Barley: Patent Law And Plant Breeders' Rights*, ACIPA Intellectual Property and Agriculture Symposium, Canberra, September 2003
- Rimmer, M., *Moral Rights, Selected Issues in Intellectual Property*, University of New South Wales, Sydney, 17 September 2003

- Rimmer, M., *Myriad Genetics: Patent Law and Genetic Testing*, Principles of Intellectual Property, The Australian National University, Canberra, 15 September 2003
- Rimmer, M., *Intellectual Property and Indigenous Cultural Property*, Indigenous Australians and the Law, The Australian National University, Canberra, 9 September 2003
- Rimmer, M., *Myriad Genetics: Patent Law and Genetic Testing*, Office of Public Policy and Ethics, IMB, The University of Queensland, Brisbane, August 2003
- Rimmer, M., *The Public Library of Science: Patent Law and Scientific Publishing*, Australian Centre for Intellectual Property in Agriculture, The Australian National University, Canberra, 12 June 2003.
- Rimmer, M., *A Secular Cloister: The Edinburgh Patent and the European Biotechnology Directive*, St Catherine's College, Oxford University, England, 30 May 2003
- Rimmer, M., *Plant Breeder's Rights*, Research and Development Corporation Training Workshop, Canberra, 26 May 2003
- Rimmer, M., *The Public Library of Science: Patent Law and Scientific Publishing*, Centre for Intellectual Property Research, Brisbane, 22 May 2003
- Rimmer, M., *Intellectual Property and Biotechnology*, Guest Lecture, Biotechnology in Context, Faculty of Science, 3 April 2003
- Rimmer, M., *Attack Of The Clones: Patent Law And Stem Cell Research*, 2<sup>nd</sup> Australian Stem Cell Summit, Melbourne, 11 March 2003
- Rimmer, M., *Attack Of The Clones: Patent Law And Stem Cell Research*, Office of Public Policy and Ethics, The University of Queensland, Brisbane, 13 February 2003
- Rimmer, M., *Against the Grain: GM Food, Trade and Intellectual Property*, National Youth Science Forum, 28 January 2003
- Sherman, B., *Terminator Technology and the Control of Genetic Resources*, ACIPA Intellectual Property and Agriculture Symposium, September 2003
- Sherman, B., *Terminator Technology and the Control of Genetic Resources*, ATRIP Conference, Tokyo, June 2003

## ➔ POLICY

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ACIPA made a number of contributions in 2003 to the policy development of intellectual property law as it relates to agriculture in Australia. In particular, ACIPA established the *ACIPA Intellectual Property and Agriculture Symposium* to simulate debate about key intellectual property issues facing the rural sector in Australia. Planning for these events took place in 2003, with the first Symposia being held in September 2003. This was the first of a regular series of events that will be held by the Centre. Speakers at the first symposia were:

- Bruce Drinkwater, Legal Consultant, Southcorp Wines, *Geographical Indications: Current Issues in the Wine Industry*
- Lisa Filipetto, Assistant Secretary, Services and Intellectual Property Branch, Department of Foreign Affairs and Trade, *International Negotiations – Geographical Indications*
- Dr Simon Hearn, Executive Director, Rural Industries Research and Development Corporation, *Commercialising Agricultural Research*
- Vince Logan, Executive Manager, Business Development, Grains Research & Development Corporation, *Confessions of a Biopirate and Other Tales on the Commercialisation of Agriculture Research*
- Peter Neilson, Australian Manager, Crop & Food Research Australia, *Commercialisation of Agricultural Varieties and Intellectual Property Protection*
- Dr Matthew Rimmer, Lecturer, ACIPA, The Australian National University, *Franklin Barley: Patent Law and Plant Breeders' Rights*
- Prof Brad Sherman, Director, ACIPA, Griffith University, *Genetic Use Restriction Technologies: Implications for Intellectual Property Policy Making*

ACIPA also contributed to the development of intellectual property policy by making submissions to public inquiries and by being appointed to a number of key national and international policy making bodies. These included:

- Burrell, R. and M. Handler assisted the Rural Industries Research and Development Corporation (RIRDC) by developing detailed Intellectual Property Management and Commercialisation guidelines and by providing advice to General Managers of Research at RIRDC on intellectual property issues affecting research projects and outcomes
- Handler, M., member of the RIRDC Board Subcommittee on Intellectual Property and Commercialisation, May 2003
- Lawson, C., Submission to the Trade Practices Act Review Committee (Dawson Review)
- Lawson, C. and M. Rimmer, Submission to the Australian Law Reform Commission Issues Paper on Gene Patenting and Human Health
- Rimmer, M. and I. Omar, Submission to the Digital Agenda Review Issues Paper

- Rimmer, M., Supplementary Submission to the Australian Council on Intellectual Property Inquiry into the Innovation Patent - Exclusion of Plant and Animal Subject Matter, July 2003
- Rimmer, M., Submission on the Carroll Report on the National Museum and the Garden of the Australian Dreams: Copyright Law and Moral Rights, July 2003
- Sherman, B., Member of the Joint Advisory Committee on Genetics, Intellectual Property Rights and Health, Australian Law Reform Commission
- Sherman, B., Appointed Technical Expert to the United Nations Convention on Biological Diversity Secretariat on Genetic Use Restriction Technology
- Sherman, B., Consultant to Phillips Fox for the *Copyright Digital Agenda Review* (Commissioned by the Attorney-General's Department)

## ➔ POSTGRADUATE EDUCATION

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ACIPA is committed to raising the skills base of key players in the agricultural sector. To this end, we have established four Postgraduate Programs in Intellectual Property Law in Brisbane and Canberra. These are the Master of Laws in Intellectual Property Law, the Master of Intellectual Property Law (for non-lawyers), the Graduate Diploma in Intellectual Property Law and the Graduate Certificate in Intellectual Property Law. To date, courses have been delivered to over 350 students (including GRDC, RIRDC and CSIRO staff, researchers in the biosciences and DFAT staff with intellectual property responsibilities).

In 2003 ACIPA held eight intellectual property courses in Brisbane and Canberra. The courses delivered were:

- Principles of Intellectual Property Law (8-9 & 15-16 March Brisbane, 12-16 March Canberra)
- Trade Mark Law and Related Rights (30 April-4 May Canberra)
- Copyright Law and Related Rights (22-25 May Brisbane)
- Patent Law and Related Rights (3-6 July Brisbane)
- International Intellectual Property Law (6-10 August Canberra)
- Selected Topics in Intellectual Property (11-14 September Brisbane)
- Intellectual Property Management & Commercialisation (1-5 October Canberra)
- Research Project in Intellectual Property Law

## ➔ TRAINING

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Intellectual property training forms a core part of ACIPA's primary activities. The aim of our training is to ensure that growers are properly equipped to understand the nature of intellectual property law and how it affects them in their daily activities. We also aim to ensure that the money invested in agricultural intellectual property is protected in a way that provides the most appropriate returns to growers. To this end we also aim to provide intellectual property training to research scientists and research managers.

During 2003 ACIPA delivered 11 training courses to a mixture of farmers, research managers, scientists, and breeders. In total more than 250 people attended our training courses. Courses were delivered in a range of locations including Canberra, Brisbane and Toowoomba. Training sessions included:

- *Intellectual Property Training Seminar, Land and Water Australia, Canberra, March 2003*
- *Training Seminar on Ownership of Intellectual Property and GM Liability, Grains Research and Development Corporation, Canberra, March 2003*
- *Intellectual Property Training Program for RDCs, Canberra, April-September 2003*
- *Introductory Intellectual Property Training Seminar, Brisbane, July 2003*
- *Freedom to Operate, Training Seminar for Grains Research and Development Corporation External Research Managers, Canberra, August 2003*
- *Intellectual Property Training Workshop, October 2003, Toowoomba*

## ➔ EVENTS

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### CONFERENCES AND SYMPOSIA

- *Copyright L'amour: Unfinished Business*, 14 February 2003, Brisbane. Opened by Professor Glyn Davis, Vice-Chancellor, Griffith University. Speakers included: Justice von Doussa (Federal Court of Australia); Robert Burrell (ACIPA); Dr Anselm Kamperman Sanders (Universiteit Maastricht); Prof Tom O'Regan (Griffith University); Kylie Browne (DCITA); Barton Hoyle (Attorney-General's Dept); Dr Warwick Rothnie (Barrister); and Libby Baulch (Australian Copyright Council).
- *Intellectual Property and Agriculture Symposium*, 18 September 2003, Canberra. Opened by Senator Judith Troeth, Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry. Speakers included: Bruce Drinkwater (Legal Consultant to the Wine Industry); Lisa Filippetto (DFAT); Dr Simon Hearn (RIRDC); Vince Logan (GRDC); Peter Neilson (Crop & Food Research Australia); and Dr Matthew Rimmer (ACIPA).
- *Intellectual Property and the Life Sciences: Agriculture, Health and Trade*, 21 November 2003, Canberra. Opened by Emeritus Professor John Lovett, Managing Director, Grains Research and Development Corporation. Speakers included: Professor Anne Finlay (ALRC); Dr Margaret Llewelyn (The University of Sheffield); Dr Peter Stearne (Davies Collison Cave); Dr Lee Ann Jackson (University of Adelaide); Professor Ross Garnaut (ANU); Dr Charles Lawson (ACIPA); Ms Elizabeth Evans-Illidge (Australian Institute for Marine Science); and Dr Dianne Nicol (University of Tasmania).

### SEMINARS

- *Biotechnology Patenting in Europe*, Professor Geertrui Van Overwalle, Centre for Intellectual Property Rights, Faculty of Law, KU Leuven-KU Brussel, Belgium (Brisbane and Canberra)
- *Registered Geographical Indications: Intellectual Property, Agricultural Policy and International Trade*, Associate Professor William Van Caenegem, School of Law, Bond University (Brisbane and Canberra)
- *Cargo Cults and Intellectual Property in the South Pacific*, Ms Miranda Forsyth, Associate Lecturer, University of the South Pacific (Canberra)
- *Trade Mark Law and Graphical Representation*, Mr Robert Burrell, Associate Director and Senior Lecturer, ACIPA, The Australian National University (Brisbane and Canberra)
- *Consolidating Control: Genes, Seeds and Plant Variety Rights*, Dr Richard Hindmarsh, Lecturer, Australian School of Environmental Studies, Griffith University (Brisbane)
- *International Intellectual Property Negotiations: A 'Real Time' Analysis*, Adrian White, International Intellectual Property Section, Office of Trade Negotiations, Australian Department of Foreign Affairs and Trade (Brisbane)

- *Intellectual Property Rights Over Genetic Resources: An Australian Dilemma*, Dr Charles Lawson, Research Fellow, ACIPA, Griffith University (Brisbane and Canberra)
- *Copyright Culture and the Public Domain: A Critical Analysis*, Professor Hugh Hansen, School of Law, Fordham University (Canberra)
- *Realising New Forms of Intellectual Property Rights: What's So Sui Generis About Traditional Knowledge?*, Mr Antony Taubman, Senior Lecturer, ACIPA, The Australian National University and Director of Global Issues, World Intellectual Property Organisation (Brisbane and Canberra)
- *Twisted Sisters: Jurisdiction and International Copyright in the Digital Age*, Ms Miranda Lee, Executive Officer, Australian Digital Alliance (Canberra)
- *The Public Library of Science: Patent Law and Scientific Publishing*, Dr Matthew Rimmer, Lecturer, ACIPA, The Australian National University (Brisbane and Canberra)
- *Parallel Importation: The Story Industry Won't Tell You!*, Stephen Fox, Principal Legal Officer, Copyright Law, Attorney-General's Dept (Brisbane)
- *A Real Pea Souper: The Panel Case and the Unprincipled Development of the Fair Dealing Defences to copyright Infringement in Australia*, Mr Michael Handler, RIRDC Research Fellow, ACIPA, The Australian National University (Brisbane and Canberra)
- *The HCV Litigation: Ten Years On, Has Patent Law Changed?*, Mr Luigi Palombi, Solicitor and PhD Candidate, School of Law, University of New South Wales (Canberra)
- *Biotechnology and Biopiracy: Doha and Beyond*, Mr Peter Lawrence, International Intellectual Property Section, Dept of Foreign Affairs & Trade (Canberra)

## ➔ VISITORS

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### **Dr Margaret Llewelyn**

Dr Margaret Llewelyn is a reader in Intellectual Property law at The University of Sheffield and editor of the *Intellectual Property Quarterly*. She is an international expert on issues relating to the legal protection of biological material, and in particular the interface between patents and plant variety rights. She was awarded her PhD in 1990 for her thesis on 'The Legal Protection of New Plant Varieties'. She is the author of numerous works on the legal protection of biotechnology and co-edited in 1998 (with Professor Roger Brownsword and Professor W R Cornish) 'Human Genetics and the Law: Regulating a Revolution'. She has recently completed an EU funded research project into 'Attitudes Towards Plant Intellectual Property Within the European Plant Breeding Industry' and a project, with Professor W R Cornish, for the UK Department of Health entitled 'Intellectual Property Rights (IPRs) and Genetics: A Study into the Impact and Management of Intellectual Property Rights within the Healthcare Sector'. She is currently a member of the Steering Group (together with Paul Leonard (IPI) and Steve Smith (NuPharma)) for a DTI funded project on the 'Impact of Gene Sequence Patents on the Pharmaceutical Industry'. Other current research projects include 'Bioethical Implications of Intellectual Property Rights', funded by the Japanese Sasakawa Peace Foundation and 'Regulation of the Human Genome', funded by the New Zealand Law Foundation.

### **Professor Geertrui Van Overwalle**

Professor Geertrui Van Overwalle works at the Centre for Intellectual Property Rights (CIR) of the Catholic University Leuven and the Catholic University Brussel (Belgium). She has been a Visiting Professor at the United Nations University (2000-2003), the University of Ruhuna, Matara, Sri Lanka (2000), Renmin University of China (2001) and the Catholic University Nijmegen, the Netherlands (2002-2003). She is the author of numerous articles and various monographies relating to patent law and biotechnology. Her main fields of research are: patent law, plant breeder's rights law, patents and biotechnology, IPR and biodiversity, IPR and ethics. Geertrui has recently been appointed as a member of the European Commission's Expert Group on Biotechnological Inventions.