

program

- 08.30 - 09.00 Registration
- 09.00 – 09.15 Welcome
Professor Brad Sherman, Director, Australian Centre
for Intellectual Property in Agriculture, Griffith
University
- Open
Emeritus Professor John Lovett, Managing Director,
Grains Research and Development Corporation
- 09.15 – 10.30 Session 1 - Gene Patents
- Chair: Professor Brad Sherman, Director, Australian
Centre for Intellectual Property in Agriculture, Griffith
University
- The Australian Law Reform Commission Inquiry into
Patenting of Genes and Genetic Material – Some Key
Issues*
Professor Anne Finlay, Commissioner, Australian Law
Reform Commission
- Intellectual Property Rights on Public Healthcare: A
UK Response*
Dr Margaret Llewelyn, Reader in Intellectual Property
Law and Deputy Director, Sheffield Institute of
Biotechnology Law and Ethics, Faculty of Law, The
University of Sheffield
- 10.30 - 11.00 Morning Tea
- 11.00 - 12.30 Session 2 - Agricultural Biotechnology and GM Food
- Chair: Mr Paul Ross, Manager, Biotechnology
Australia

Creativity, Co-existence and Confusion: Intellectual Property and its Interface with Agricultural Biotechnology and GM Foods

Dr Peter Stearne, Patent Attorney, Davies Collison Cave

GMOs, Product Definition, and International Trade

Dr Lee Ann Jackson, Senior Research Fellow, Centre for International Economic Studies, School of Economics, University of Adelaide

12.30 - 13.30 Lunch

13.30 - 14.45 Session 3 - Intellectual Property and International Trade

Chair: Dr Matthew Rimmer, Lecturer in Law, Australian Centre for Intellectual Property in Agriculture, The Australian National University

Trading Blows: On the Damage Done by the Collapse of the Cancun Trade Talks

Professor Ross Garnaut, Professor of Economics, Research School of Pacific and Asian Studies, The Australian National University

Food and Agriculture Organization Agreement on Plant Genetic Resources

Dr Charles Lawson, Research Fellow, Australian Centre for Intellectual Property in Agriculture, Griffith University

14.45 - 15.15 Afternoon Tea

15.15 - 16.30 Session 4 - Access to Genetic Resources

Chair: Mr Geoff Burton, Department of the Environment and Heritage

Marine Biodiscovery Research

Ms Elizabeth Evans-Illidge, Head of Marine Biology and Ecology Project, Australian Institute for Marine Science

Bioprospecting in Antarctica

Dr Dianne Nicol, Lecturer, Centre for Law and Genetics, Faculty of Law, University of Tasmania

19.00

Conference Dinner

(for those who are registered for the conference dinner)

The Boat House By The Lake, Grevillea Park, Menindee Drive, Barton

speakers and abstracts

Professor Anne Finlay
Commissioner, Australian Law Reform Commission

The Australian Law Reform Commission Inquiry into Patenting of Genes and Genetic Material – Some Key Issues

The Australian Law Reform Commission (ALRC) is undertaking an inquiry into Intellectual Property Rights over Genetic Materials and Genetic and Related Technologies with a particular focus on human health. The ALRC released an Issues Paper (IP 27) in July 2003 and is currently preparing a Discussion Paper for release early in 2004 with the final report due by 30 June 2004.

This paper outlines the background to the inquiry and discusses some of the key issues raised in IP 27, the emerging avenues for reform and the issues that affect possible reform.

Although the Terms of Reference ask the ALRC to consider the impact of gene patents and licences on healthcare, the ALRC is also asked to examine their impact on the biotechnology sector and on research and its application and commercialisation. This highlights the complexity of the ALRC's task and the need for a careful balancing of potentially competing interests. Reforms that may be attractive to health providers, might have an adverse impact on Australian biotechnology companies or be contrary to Australia's obligations under the TRIPS Agreement (Trade Related Aspects of Intellectual Property Rights).

Biography

Professor Finlay is a full-time commissioner with the Australian Law Reform Commission. She was appointed to the ALRC in November 2001 for three years. Immediately prior to this appointment Professor Finlay was Dean of Law at the University of Newcastle where she had been employed since 1989.

Professor Finlay is one of the commissioners in charge of the ALRC's reference on gene patenting and human health. She was previously on the civil and administrative penalties reference.

Dr Margaret Llewelyn

Reader in Intellectual Property Law and Deputy Director Sheffield Institute for Biotechnology Law and Ethics, Faculty of Law, The University of Sheffield

Intellectual Property Rights on Public Healthcare: A UK Response

In 2002 the UK's Department of Health commissioned Professor W R Cornish, Dr M Llewelyn and Dr M Adcock to undertake a study looking at the implications of IPRs on genomic technology with a view to developing an appropriate management response. The study, together with that commissioned by the Department of Trade and Industry (DTI) which is being undertaken by the Intellectual Property Institute, is intended to serve as the Government's response to concerns raised by the House of Lords Select Committee on Science and Technology. It also fed into the White Paper on Genetics published in July 2003.

This paper will provide an overview of the research, which was published in July 2003, and address those issues regarded as being of particular importance to a public healthcare service. Whilst the research looked at all forms of relevant intellectual property rights, it focussed primarily on the patent system and specifically on: a) The definition of what subject-matter is patentable; b) The scope of the right granted; c) The nature and extent of the research exemption; d) The role of public interest exemptions and competition law and e) capacity to dictate licensing terms. The extent to which the Department itself can control policy (and particularly licensing in and licensing out agreements) as well as relying on its public basis as a rationale for 'special treatment' *vis a vis* the application of the restrictions to the rights granted to the patentee, could be constrained.

The study concluded that the Department of Health needs to develop a centrally directed robust yet flexibly responsive strategy involving active engagement with other policy directors (such as the DTI), granting offices, the hubs and product and service providers, ensuring that in matters relating to intellectual property provision the interests of the health service are given due prominence.

Biography

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.

Dr Peter Stearne
Patent Attorney, Davies Collison Cave

*Creativity, Co-existence and Confusion:
Intellectual Property and its Interface with Agricultural Biotechnology
and GM Foods*

There has been an explosion in the last 15 years in developments in agricultural biotechnology and genetically modified foods. Equally, an explosion in intellectual property (IP) rights has occurred over this time frame. In Australia, Plant Breeders' Rights and Patents have co-existed for 15 years. As a consequence of these developments, plant innovators, growers, wholesalers and retailers in the fields of agricultural biotechnology and genetically modified foods are faced with a dilemma which they may or may not be aware of. This dilemma is multi-faceted and relates to what is IP protectable and what is not and what under regime, possible infringement of IP rights and variable consequences and options which may or may not ensue, who owns any IP rights and how does one find out about them (and should one bother to do so), what head of intellectual property protection cognisance should be given to, if any, and conflicts between these heads of intellectual property. This presentation explores these issues, in particular drawing parallels and distinctions between patent law, Plant Breeders' Rights as well as other heads of IP protection, and will include an examination of IP audit, innocent and non-innocent infringement and consequences thereof, infringement exemptions including 'farmer's exemptions' and 'experimental use' exemptions (if any), and intellectual property due diligence in a litigious society.

Biography

Dr Peter Stearne, a partner of Davies Collison Cave, leads the chemical/biotechnology patent practice group of Davies Collison Cave. Peter became a partner of the firm in 1992 after joining the firm in 1984.

Peter practices generally in the fields of pharmaceutical chemistry, polymer chemistry, protein and nucleic acid chemistry, general chemistry, all facets of molecular biology, microbiology, immunology and plant innovations. His practice includes preparation and prosecution of patent applications in these fields, advice in relation to patent validity and enforcement, patent strategy, extension of patent term, patent opposition and patent litigation in the Federal Court of Australia

Peter has a significant patent opposition practice before the Australian Patent Office with a high success rate.

Peter previously worked with a leading United States (US) law firm in Washington DC, and is experienced in US patent law including patent prosecution, preparation of US utility patent and plant patent applications, and interference practice.

Peter holds a Bachelor of Science with Honours majoring in chemistry and biochemistry from the University of Melbourne, and completed a Doctor of Philosophy in Medical Biology at the Walter and Eliza Hall Institute of Medical Research. Peter also holds a Bachelor of Laws Degree with Honours from Macquarie University.

Peter is a Registered Australian and New Zealand Patent and Trademarks Attorney and a Fellow of the Royal Australian Chemical Institute.

Dr Lee Ann Jackson

Senior Research Fellow, Centre for International Economic Studies,
University of Adelaide

GMOs, Product Definition, and International Trade

In September 2003 the WTO established a dispute panel to address complaints by the United States (US) concerning the European moratorium against production and trade of genetically modified organisms (GMOs). Canada and Argentina joined the US formally and another group of nine countries supported the motion informally.¹ In the wake of this complaint the EU implemented sweeping legislation, requiring identity preservation and labelling of GM products based upon a highly nuanced definition of what constitutes a GM product. While the EU maintains that these new requirements invalidate the US complaint, the US argues that they act as yet another regulatory intervention that ultimately inhibits free trade.

Domestic GM identity preservation regulations can alter the requirements for imported products in two ways: either by specifying content standards, or by defining product specifications for local products in that differ from specifications of trading partners. By raising both the fixed and marginal costs of foreign firms seeking to enter the domestic market these complex regulations influence market access. Existing infrastructure and production patterns will determine how costly it is for countries to participate in markets with strict identity preservation and labelling requirements. This paper examines the broader trade implications of these product definitions and labelling requirements and seeks to identify how product definitions in conjunction with labelling requirements may affect countries differently, depending upon existing trade patterns.

Biography

Lee Ann is a research fellow at the Centre for International Economic Studies at the University of Adelaide, where she is also a part-time lecturer for the School of Economics. She received her PhD in applied economics from the University of Minnesota and a joint Masters of Environmental Studies and Public and Private Management from Yale University. She also spent several years working for the International Food

¹ These countries include Chile, Colombia, El Salvador, Honduras, Mexico, New Zealand, Peru and Uruguay. In addition Egypt initially joined the US in its request for consultations, and later removed itself from list of supporters.

Policy Research Institute in Washington DC. Her research looks at issues related to international trade and agricultural biotechnology, with an emphasis on non-tariff trade barrier impacts of national regulations associated with biotechnology products. She recently received an ARC post-doctoral fellowship to expand her research to look at the international and intra-national distributive impacts of agricultural biotechnology adoption and policies.

Professor Ross Garnaut

Professor of Economics, the Research School of Pacific and Asian Studies, The Australian National University

Trading Blows: On the Damage Done by the Collapse of the Cancun Trade Talks

The recent failure of World Trade Organisation talks in Cancun means at least that the first round of negotiations since the General Agreement on Tariffs and Trade became the more ambitious WTO eight years ago will not conclude on schedule in early 2005. A larger consequence is that when high-level meetings resume, Cancun and its consequences may have made the climate for a liberalising outcome much less favourable.

The deal on agriculture offered by the US and the European Union was disappointing to agricultural free-traders. But, unlike the bilateral free trade agreements offered to a few by the US, the proposal that was emerging at Cancun embodied substantial reductions and binding limits on production and export subsidies. This was much the best agricultural liberalisation deal that had ever been available in any context.

The risks to the open trading system in the year ahead are considerable. Two years of rising interest in bilateral and regional Free Trade Areas will now crystallise in a plethora of discriminatory trading arrangements. Supporters of bilateral free trade agreements dream that they can contradict the most favoured nation (even-handed treatment of all partners) principles of the multilateral trading system without weakening that system. But they will still be here tomorrow, but their dreams may not.

Biography

Professor Ross Garnaut is a Professor of Economics at the Research School of Pacific and Asian Studies at The Australian National University. He is a Chairman of the Pacific Economic Outlook Forecasting Group, and a number of companies, and is currently Director of the International Food Policy Research Institute.

Professor Garnaut is the author of the Report presented to the Australian Prime Minister and Minister for Foreign Affairs and Trade in October 1989, *Australia and the Northeast Asian Ascendancy*. He is also author of numerous books, monographs and articles in scholarly journals on international economics, public finance and economic development,

particularly in relation to East Asia and the Southwest Pacific. The most recent books of which he is author or co-author are *The East Asian Crisis: From Being a Miracle to Needing One?* (1998, Routledge, New York and London); *China: Twenty Years of Economic Reform* (1999, Asia Pacific Press, Canberra); *Growth Without Miracles* (2001, Oxford University Press, Oxford); *Private Enterprise in China*, (2001, Asia Pacific Press, Canberra and China Center for Economic Research, Beijing); *Social Democracy in Australia's Asian Future*, (2001, Asia Pacific Press, Canberra, and Institute of Southeast Asian Studies, Singapore).

Professor Garnaut has had a distinguished career. Highlights include being Australian Ambassador to China (1985-88); Senior Economic Adviser to Prime Minister R.J.L. Hawke (1983-85); First Assistant Secretary (Head of the Division of General Financial and Economic Policy), Papua New Guinea Department of Finance (1975-76); Research Director of the ASEAN-Australia Economic Relations Research Project (1981-83); and Foundation Director of the Asia-Pacific School of Economics and Management (1998-2000).

Dr Charles Lawson

Research Fellow, Australian Centre for Intellectual Property in Agriculture, Faculty of Law, Griffith University

Food and Agriculture Organization Agreement on Plant Genetic Resources

A key controversy in negotiating the International Treaty on Plant Genetic Resources for Food and Agriculture, and the likely long-term effectiveness of the agreement, is the way the intellectual property provisions are interpreted and applied to the key genetic resources forming the Consultative Group on International Agricultural Research (CGIAR) system of International Agricultural Research Centres' (IARC) collections. This presentation reviews the intellectual property provisions in the treaty and examines the likely consequences from patenting under the *Patents Act* 1990 over materials derived from these collections. The consequence is argued to be significant and, over time, these practices are likely to deplete the usefulness of these collections and undermine the objectives of the treaty. The presentation concludes that Australia's interests might best be served by arguing that access to these collections, and the other materials under the treaty, be subject to a non-exclusive, royalty free license for any use of the derived materials to develop useful new plant varieties.

Biography

Charles Lawson was appointed as a Research Fellow in the Australian Centre for Intellectual Property in Agriculture at Griffith University in 2003. Charles came to the Centre from the Commonwealth Department of Finance and Administration. Previously he worked with Senator Stott Despoja as a principal adviser, and the Australian Government Solicitor as a senior lawyer. He holds combined Science and Law degrees from the ANU, a Master of Laws from QUT and a Doctorate of Philosophy from the ANU. He is also a Visiting Fellow at the Genomic Interactions Group at RSBS at the ANU. Charles' research interests include the interaction between law and genetics through intellectual property, competition, trade, access, taxation, public and administrative law, risk assessment and management, and evolving human rights.

Ms Elizabeth Evans-Illidge

Marine Biotechnology Research Group, Australian Institute of Marine Science

Marine Biodiscovery Research

Marine biodiscovery research seeks to discover naturally occurring marine molecules with potential to be developed into new commercial products, and then propel them down a value-adding research and development pipeline to commercial reality. The Australian Institute of Marine Science (AIMS), a Commonwealth government research agency, has been involved in this field for over 15 years, utilising an ever-increasing library of samples taken from Australia's mega-biodiverse marine realm. AIMS is highly collaborative, and has utilised strategic linkages to industry and other research organisations, both within Australia and overseas. Through these partnerships, AIMS has had active interest in a range of commercial targets including pharmaceuticals, agrichemicals, nutraceuticals, and bioremediation.

This presentation will outline biodiscovery at AIMS and its place in the global context of this research field, the range of issues associated with engaging collaborative partners and external R&D funding, and the generation and management of IP in commercially motivated research that exploits nature. It will discuss the diversity of formal and tacit IP involved, and issues and impediments in its protection and management. Importantly, the talk will underscore ethical and regulatory issues surrounding access to in-situ genetic resources, legal certainty over rights to do R&D and develop IP with biodiversity samples collected, and benefit sharing. The non-commercial rewards and benefits will also be highlighted. In conclusion, while acknowledging that no AIMS marine discoveries have yet made it to market, a vision will be presented for commercialised marine discoveries of the future, and an R&D pathway that captures maximum Australian participation and IP development, and benefits in the widest sense, including conservation of marine biodiversity.

Biography

Elizabeth (Libby) Evans-Illidge has been a marine biologist since 1983, when she graduated from James Cook University in Townsville (Nth Queensland). She works as a Research Scientist in the Marine Biotechnology Research Group at AIMS, where she manages AIMS' biodiscovery collection of marine organisms, negotiates permits and agreements for access to biological resources including benefit sharing

and use of the collection, and participates nationally and internationally in the development of policy and best practice for access and equitable benefit sharing. She also conducts research into aquaculture of sponges for the sustainable production of biodiscovery products, as a new enterprise for remote coastal indigenous communities. Her background in marine science has taken her right around Australia and to the far reaches of the Indian Ocean, and includes a 7 year stint in the culturally and environmentally diverse environment of the Torres Strait. She has research experience in marine sponge biology, chemical ecology and aquaculture; fisheries biology; heavy metal pollution; and benthic biodiversity.

Dr Dianne Nicol

Lecturer, Centre for Law and Genetics, Faculty of Law, University of Tasmania

Bioprospecting in Antarctica

One of the key debates in relation to bioprospecting is the relationship between sovereign rights over biological resources and intellectual property rights in inventions developed from those resources. The Convention on Biological Diversity and the Bonn Guidelines establish the principal international legal regime for regulating access to biological resources in areas of national jurisdiction. The situation is more complex in regions of the world where sovereign rights are disputed or absent. One such region is the Antarctic. One of the core principles of the Antarctic Treaty is freedom of scientific investigation in Antarctica and cooperation toward that end. In this talk I will examine the roles played by the various international legal regimes in this area, particularly focusing on the interplay between the principle of freedom of scientific cooperation and commercially sponsored bioprospecting in Antarctica.

Biography

Dianne Nicol is a lecturer in the Law Faculty at the University of Tasmania and a senior research fellow in the Centre for Law and Genetics. Dianne has a PhD in cell and developmental biology from Dalhousie University in Canada and an LLM from the University of Tasmania. Her main research interests are in the areas of intellectual property, regulation of science and privacy. Her research on bioprospecting in Antarctica was undertaken in collaboration with Dr Julia Jabour-Green from the Institute of Antarctic and Southern Ocean Studies at the University of Tasmania.