



President's Report

Noosa, Queensland
FICPI Australia Annual General Meeting
Sunday 30 July 2017

It has been a very challenging 12 months for both the profession and FICPI Australia since my last President's Report provided for the AGM in Port Douglas about this same time last year.

We have seen the Productivity Commission deliver its final report, making some concessions to the numerous submissions filed in response to its draft report. Some of the more controversial recommendations that remain and which may affect our practice significantly, likely being accepted by government, are those to: (i) abandon the innovation patent system, (ii) raise the level of inventive step required for patents, and (iii) introduce a new court regime modelled more closely on the UK IP Enterprise Court.

We also have seen the consultation paper released in relation to the Conflicts of Interest issue concerning the profession arising from the decision of various firms to go public and list, which has caused us to adopt a somewhat minimalist view due to the dichotomy of views of members affected by their employment and association with the public companies and non-public companies.

Perhaps more importantly, we have seen the effects of 'disruption' of the profession arising from the new public companies that have bought many of the middle tier firms in Australia, and which now employ attorneys associated with about 65% of filings of applications. Despite the 'movers' of these new practices at the outset saying there was no perceived change to life within these firms, we can now see the impact that these businesses are having on the profession, and it is significant.

The drop-off in membership and support of our organisation I think has been a direct casualty of the change in status of former members moving from employers to employees, or their retirement from the profession. The effect with some firms has been profound and it could be said that we are being presented with a serious dilemma as to what should be the focus of FICPI Australia for the future, so that we can remain relevant to the new landscape of attorneys. This is particularly so given the change in status of eligibility for membership being broadened to allow non-owners or principals of firms to be members of FICPI Australia, and the possible reduced interest or relevance in having the working program of our annual meetings themed largely on practice management issues deemed relevant to owners of firms in the past.

As a consequence of this, we are having a session in our AGM this year devoted to seeking members' feedback on what they see as the future of FICPI Australia, and where we should be heading.

Council Activities

The main purpose of this report is actually to inform you of the matters that Council has been

attending to since the last Annual Meeting was held in Port Douglas on 31 July 2016. We have held 6 council meetings since that time, and several informal meetings, addressing a diverse range of issues. The issues that Council considered and dealt with as appropriate, following the Port Douglas meeting, are listed below in approximate chronological order:

- FICPI Japan collaboration
- Trans-Tasman Patent Attorneys regime
- Small Practitioners' Group assistance
- IP insurance opportunity involving FICPI CET 8
- IP Australia Trade Mark insurance request for proposal and tender
- Conflict of Interest enquiry and consultation paper
- IP Amendments Bill
- Productivity Commission
- Francis Gurry Lecture sponsorship
- WIPO Group B+ countries meeting

A brief summary of action and outcomes is provided below.

1. FICPI Japan collaboration

FICPI Australia and FICPI Japan collaboration arose as a topic from a direct approach made to me a couple of years ago by the president of FICPI Japan at the time, Mr Tani. It was seen as a possible response to the "controversial" initiative at the time of FICPI China joining with ACPAA to stage an open symposium every 2 years in the Asia region. This conflicted with the symposia that were previously staged by FICPI Japan and FICPI Korea every few years in the region. So a possible solution was proffered involving an invitation being extended to FICPI Australia to initially join with FICPI Japan and conduct alternating joint symposia in Japan and Australia every odd year to the FICPI China symposium, with a view possibly for Korea to join in at a convenient time in the future, if the experiment met with some success.

This seemed quite a good idea at the time and was supported by Council. Discussions carried on between me and the new FICPI Japan president, Mr Ohnishi, after Mr Tani's retirement, to the point of agreeing on a venue and draft working program. However, the economic climate for the profession in Japan has since undergone a serious change, and discussions have waned, despite initiatives including the possible staging of at least a joint meeting between the two groups on the back of either the AIPPI meeting in Sydney or the APAA meeting in Auckland later this year.

Mr Ohnishi and I still consider the proposal overall to have merit, and we are currently awaiting a reply from FICPI Japan as to what role FICPI Australia can play in the plan for FICPI Japan to stage a symposium in Japan next year.

2. Trans-Tasman Patent Attorneys Regime

It was pleasing to note that suggestions to changes in the implementing regulations to the Trans-Tasman Patent Attorneys regime made by FICPI Australia were adopted and supported by IP Australia. These involved the issues of: (i) using a physical address, (ii) the address for service provisions and (iii) experience requirements of Tribunal members.

3. Small Practitioner's Group assistance

Regular education meetings are being staged around Australia by groups of small practitioners for the purposes of meeting CPE point requirements. I have been involved with a growing group of such practitioners in Sydney and the growing need to formalise the group and the possibility of members of FICPI Australia offering some kind of support or creation of a sub-class of membership to support the group.

Council put forward a number of suggestions which are currently being considered by the Sydney group.

4. IP insurance opportunity

I have worked extensively in CET 8 in relation to a proposal involving piloting an IP (litigation) insurance program amongst a number of countries concerned with delivering a 'bridging' type cover to clients of member firms of FICPI at a very attractive premium. This is the subject of the opening session of our annual meeting in Noosa.

The proposal has the support of the Bureau and now involves sending out a survey to country groups to obtain feedback and an indication of support of the proposal from the group members of FICPI.

5. IP Australia Trade Mark insurance

FICPI Australia has provided a letter of support to the insurance brokers Willis Towers Watson (WTW) that was included in their submissions to the Request for Information and Request for Proposal put out to the insurance industry by IP Australia. This follows the work being done by WTW on the IP insurance matter referred to previously, and their leading status in the industry with providing IP insurance.

The Trade Mark Insurance initiative being adopted by IP Australia is extremely relevant to the profession and provides the opportunity for clients to insure against opposition proceeding costs, as well as litigation before the court. There is an opportunity for this type of insurance to be channelled through FICPI member firms at a preferential rate to clients, increasing the relevance of FICPI membership to the profession.

6. Conflict of Interest

As most members would be aware, the conflict of interest issue and proposed changes to the Code of Conduct has been extremely topical and is the subject of the third session at our annual meeting in Noosa. FICPI Australia worked hard to achieve a common view on particular issues, although it is fair to say that this was more minimalist given the different views and interests of our members.

I am hoping that our panel discussion will shed some more light on the issue and help Council to adopt a consensus view on the issues and be able to be supportive of the position ultimately taken by the TT Attorney Standards Board in proposing changes to the Code of Conduct.

7. IP Amendments Bill

FICPI Australia made a submission in response to the IP Amendments Bill exposure draft, although this has now been put on hold pending the response of the government to the Productivity Commission report and implementing changes arising from the latter.

Our understanding now is that proposed changes will be presented to parliament in two different stages, the first being the 'softer' changes, and the second being the more 'substantive' issues. The understanding is that possible changes to the innovation patent and inventive step provisions are being held over to be dealt with in the second stage.

8. Productivity Commission

FICPI Australia was able to make rather 'robust' submissions to the final report of the Productivity Commission. Whilst the report was significantly diluted down from the original draft as a result of the considerably large number of submissions made, most being largely critical of many of its controversial recommendations, there are still disturbing parts of the final report, including recommending the abandonment of the innovation patent system and also increasing the threshold applying to inventive step considerations.

It seems that IP Australia are adopting a more pragmatic response to the recommendations, perhaps given that they are seriously affected by some of the outcomes of the report, and so we are keenly awaiting the next stage. It should not escape members that implementation of certain of the recommendations can have a serious impact on the practice of member firms.

9. Francis Gurry Lecture sponsorship

Continued sponsorship of the Francis Gurry Lecture continues to be a thorny issue for Council, given the drop off of income from waning membership numbers and annual meeting profit. We have received a proposal for future sponsorship of this event, which will be considered responsibly by Council.

10. WIPO Group B+ countries meeting

I would like to thank our secretary Bill McFarlane for attending the WIPO Group B+ countries meeting in response to the invitation received from IP Australia and Michael Caine for helping to present FICPI Australia views on the issues under discussion.

Much of the FICPI Australia position was developed by Michael arising from his tireless work on the issues from within CET 3 and helped establish the overall Australian position to be adopted by the Australian group, especially IP Australia. This was particularly welcomed as FICPI international was unable to achieve consensus on some issues.

One of the suggestions put forward by Bill on a compromise position with respect to the grace period provisions, not previously discussed, appeared to be well received. So well done Bill.

We look forward to hearing further developments on the outcomes of the meeting in due course.

Business of Council and Members

FICPI Australia represents members at the following meetings, in its own right:

- Patent Consulting Group (PCG) meetings – Greg Chambers and me
- Trade Marks and Design Consulting Group (TMDCG) meetings – Brett Lewis, Caroline Bommer and Chris Atichian
- IP Professionals Forums (IPPF) – Mark Roberts and Charles Berman

The topics covered at these meetings are extensive, and subject to confidence in part, so I will not go into them, suffice it to say, that I consider that we have developed an excellent rapport with IP Australia. I believe we have achieved significant inroads to reaching consensus positions with IP Australia, obviously with the substantial input provided by IPTA, but importantly with FICPI Australia being able to provide a balancing international view on many topics and being able to take the edge off some of the stronger views being expressed by IPTA.

I am hoping that IP Australia continues the initiatives, although changes may likely arise if the Productivity Commission recommendations are implemented in full with respect to how IP policy is administered in the future.

FICPI International Representation

On the international front, FICPI Australia has maintained its involvement with certain FICPI Commissions and CET working groups of FICPI. Members representing us are as follows:

Contact Commission President:	Charles Berman
Statutes Commission President:	Greg Chambers
Communications Commission Member:	Charles Berman
Contact Commission Member:	David Griffith
Deontology Commission Members:	Greg Chambers Peter Huntsman
Professional Excellence Commission (PEC) Members:	Stephen Krouzecky Christian Schieber
Training and Education Commission (TEC) Vice President: Member:	Stephen Krouzecky Peter Huntsman
Academy of Education Fellows:	Leon Allen David Carmichael Peter Huntsman

CET Group 1 - Trade Marks including Madrid Agreement and Protocol, European trade marks including the Community trademark, trade mark harmonisation, geographical indications, domain names:

Brett Lewis

Group 2 - Industrial Designs, copyright including EC Design Regulation and directive, design harmonisation, revision of the Hague agreement:

Chris Atichian
Caroline Bommer

Group 3 - International patent questions including harmonisation, PCT, Paris Convention, GATT, computer-related inventions, chip protection:

Michael Caine (Chair)
Noel Brett

Group 4 - Regional Patents: including European patents: EPC and Community patent, European Patent Litigation system:

Christian Schieber

Group 5 - Inventions in certain areas including life sciences, computer technology, doing business, traditional knowledge and folklore, environmental-related inventions (“green patents”), and related issues:

Andrew Blattman
Stephen Krouzecky
Mark Roberts

Group 6 - IP Litigation, IP enforcement, including dispute settlement and arbitration; anti-counterfeiting and Customs enforcement:

James Cherry
Jeffrey Pryor

Group 7 - IP office practice, including prosecution, work sharing, patent prosecution highways, quality backlogs, official fees, restoration, e-communications; coordination with FICPI national sections on national issues:

Charles Berman

Group 8 - Licensing; Technology Transfer; Acquisitions, Divestitures and Merges; Due Diligence; Collaborations; Freedom to Operate; IP Asset Valuation; IP Ownership Issues; and IP Insurance:

Chris Bird
Stephen Krouzecky

The annual ExCo meeting was staged in Hangzhou this year in March. I attended the meeting as the Australian delegate and Bill McFarlane attended as the alternate delegate. This meeting featured a strategic planning exercise amongst all delegates, which I think will spawn some new direction for the organisation that we need to take on board at the national level, as many of the issues are directly relevant to what we are encountering at the national level. So I am welcoming the outcomes of the planning session and will feed them into the deliberations of Council to help us introduce changes with our own planning and decision-making.

I would also like to make special mention of the efforts of Greg Chambers, in chairing an advisory committee investigating the operation and structure of the Bureau and the various Commissions having regard to succession planning and the appointment of members to leadership roles within the organisation at the highest level. This was an extremely difficult and delicate task, and I consider that Greg conducted himself and the committee with distinction, being able to present the findings and recommendations masterfully. I think it was

a credit to not only himself, but also highlighted the esteem with which the Australian contingent is regarded at these international meetings. So well done Greg.

Next year we have the World Congress in Toronto, and I hope that Australia continues to be well represented at this meeting.

Future Activities

Unfortunately, this year got off to a bad start with me having some serious health concerns. I am pleased to say that I have made a better than expected recovery, although I have been seriously challenged with making some real work/life balance decisions and being forced to actually implement them. I have a better appreciation now of the importance of this for members personal well-being and hope that our annual meetings can still maintain a topic along these lines in the working program.

Our problems have been exacerbated by one of council members taking maternity leave, and so I am very relieved to see that Alyssa is now back, with her bouncing baby boy Magnus in toe, and look forward to receiving her invaluable contributions once again.

The new public companies may also be having an impact with councillor participation, which became evident with the planning of the present annual meeting. I think we need to make some hard decisions as to how council conducts itself and our annual meetings in future years, given the significant impact we are feeling on our activities. Therefore I am looking forward to receiving input from members at our AGM and the agenda item directed at discussing our future.

The added responsibility shared amongst the remaining councillors has been a very positive learning experience for both our Secretary and Treasurer, and I think the planning of this conference and the necessity of us having to work as a team, has matured our relatively new council immeasurably. I think the content of our annual meeting continues to be beyond reproach, and we as a council need to be proud of what we can achieve in this regard. However it is quite disappointing that we do not get the return on investment of councillors' time and effort that goes into organising these meetings, as we would expect or in my opinion, deserve from our membership at large.

Notwithstanding, there are some exciting activities on the horizon. Whilst the collaboration with FICPI Japan has slowed, I still consider that the attraction of overseas visitors to our Annual Meetings as a positive thing, addressing a marketing issue that perhaps has dissuaded members from attending Annual Meetings in the past. As you would note, we had excellent involvement of FICPI international colleagues in Patrick Erk, president of PEC, and Anne Levy, chair of CET 8, attending in a remote and virtual manner, which I think added to the quality of annual meeting significantly and the possibility of adopting a quality self-assessment program along the lines of the French Charter.

The activities of PEC also are of considerable interest to us, where PEC are considering highly topical and interesting issues involved with practice management, which clearly is of relevance to members.

Ongoing work with small firm practitioners is something that I consider needs to be continued and I look forward to us following up on this and hopefully being able to increase our membership as a result.

The very exciting prospect of a form of IP insurance being adopted that could also prove attractive to increasing membership, following endorsement by the Bureau, is obviously close to me, and I hope that we may be able to bring something to fruition of relevance to our members over the forthcoming years. Indeed I expect that the impact of Trade Mark Insurance proposals will help fuel interest in this area, and highlight the benefits to members of the opportunity that may be available to us in this area.

The next year appears to be developing as an exciting year ahead, where hopefully we see only positive and realistic initiatives arising from the Productivity Commission report and the Code of Conduct changes, where hopefully the latter will provide some guidance addressing Conflict of Interest issues to assist us with conducting our practices within the profession.

Finally, I wish to thank all councillors for their contribution and support over the last 12 months. It has been a very challenging year, but I am pleased to see the experience and maturity of councillors growing as we continue to tackle some of the rocky road that we have been encountering.

As our councillors are elected to represent our members, please free to contact the councillor who you think may best understand and carry the issue to Council. So I will conclude by listing the current council members for your benefit:

President:	Stephen Krouzecky
Secretary:	Bill McFarlane
Treasurer:	Mark Roberts
Council Members:	Charles Berman
	Christian Schieber
	Carolyn Bommer
	Alyssa Grabb
	Chris Atichian
Immediate Past President:	Greg Chambers

Stephen Krouzecky
President
FICPI Australia
30 July 2017