

PRESIDENT'S REPORT

FICPI AUSTRALIA

ANNUAL GENERAL MEETING

24 JULY 2005

Council has had another busy year, with all councillors being active. In addition to me, and Greg as secretary, we have on council Noel as immediate past president and six elected councillors. Steve as Treasurer is one of these, and Jeffrey Ryder, Paul Whenman, Charles Berman, Christian Schreiber and Bill McFarland are the other five. Additionally, of course we have Malcolm Royal and David Griffith as ex-officio members.

The early part of the year since the last AGM was particularly busy, as I will detail later. We had 3 formal council meetings during the main part of the year, in early August and early December 04 and in late February 05. We also had one last Friday, here in Broome. The meetings are normally held by video and phone conference, but there are many other informal meetings and discussions during the year.

I want to give you some flavour this year of what we get up to on the international front, because I suspect many of you are not fully aware of the relationship between FICPI the international body and this Australian Association of FICPI. Greg and I are the AU sub-delegate and delegate to the FICPI Executive Committee, which holds meetings about every eight months and is the decision making body behind FICPI, and we are responsible for presenting FICPI Australia's view on all issues discussed by the ExCo. In the last year, one ExCo was held in Venice in September 04 alongside the successful Forum there, which both of us attended. Another was held in Seoul in early May 05. Greg was not able to attend that one and we were represented by Steve and me. The next will be alongside the Forum in Lisbon in October/November 05, and I think you will all have received your papers for this in the last week.

We prepare Country Reports for the ExCo, detailing activities in Australia since the last ExCo. Copies of these are available in the library of the FICPI website, but no doubt copies will appear on our website in future.

The ExCos discuss and issue a number of resolutions on IP topics of current interest for public consumption, and you have been copied with these. From the last two ExCos they relate to:

- Requirements for disclosure of the source or origin of Genetic Resources referred to in patent applications
- Trade mark opposition proceedings in Europe
- Unpublished prior art
- Prior art effect irrespective of language
- Progress towards patent harmonisation, and
- Patent attorney services in the EP internal market.

The major issue raised at the ExCos in Venice and Seoul have been the hold-up in WIPO's harmonisation moves and with the SPLT. This is due to the developing countries' Development Agenda and their moves to have Traditional Knowledge and Genetic Resources (TK & GR) recognised as IP – with corresponding rewards/benefits to those countries and the requirement for the source of TK & GR to be disclosed in patent applications. I have to say that there is not likely to be any progress in the foreseeable future on harmonisation or the SPLT as a result of the difficulty in resolving these moves by the developing countries.

FICPI supported the 'reduced package' of harmonisation issues – first-to-file, grace period, clear definition of novelty and inventive step, and clear definition of prior art - proposed by some developed countries to be dealt with by WIPO as a means of advancing the discussions, but this move has not been successful.

These issues are still under discussion within FICPI and, for example, Steve is currently looking at the issue of a consistent definition of novelty being proposed by FICPI's CET Group 3 (international patent matters).

There are numerous Intergovernmental meetings in WIPO dealing with, or trying to deal with, the Development Agenda and TK & GR, which FICPI representatives attend. This task usually falls to the Chair of the FICPI CET Group 8 dealing with this topic, Bastiaan Koster from ZA, but in June 05 I attended a second Intergovernmental Intersessional Meeting on the Development Agenda on behalf of FICPI, in my capacity as the reporter of CET Group 8. The meeting was attended by government delegates from around the world, mostly senior diplomats, regional representatives such as the EPO and many NGOs, of which FICPI was one.

As a result of this involvement, Bastiaan and I were requested to write a 3000 word article on TK & GR and the Development Agenda on behalf of FICPI for the corporate IP journal World IP Review. I'm not sure when it is due to be published, but the completion date was 22 July. Hopefully, we'll be permitted to put a copy of the article on the FICPI and FICPI Australia websites.

Still on international issues, I can report that I have accepted an invitation from the FICPI Bureau – effectively the international equivalent of our Council – to take over the chair of their Statutes Commission from the World Congress in Paris next year, when the current incumbent retires after 12 years. This means that I'll be in charge of amendments and refinements to the rules and regulations that govern FICPI's activities at an international level. It's a bit daunting, especially as the Statutes are in French and German as well as English.

Others from FICPI Australia are also involved at the international level. Malcolm of course, as the immediate past international president is on the FICPI Bureau, and therefore remains involved at the highest level. He also chairs the Education and Training Commission, so looks after the Forum technical programmes and the SEAD training course, for example.

David Griffith has been President of the Contact Commission for as long as I have been involved internationally. In this role he is in charge of expanding FICPI's membership by chasing up potential new individual members in countries that do not have membership sections or associations. The countries with only individual membership don't have any representation at the ExCos, so his other role in this capacity is persuading the larger groups of individuals to form a FICPI section in their country.

Finally, Noel Brett remains involved as a member of the Commission overseeing membership applications from individuals, and as a member of the Finance Review Board keeping an eye on FICPI's budget and finances generally.

All of Malcolm, David and Noel put in considerable time and energy for FICPI, and I thank them on behalf of you all for helping to elevate FICPI to its internationally highly regarded position and for establishing a very high profile for Australia within FICPI.

So, what about the Australian end? Still with the international connection is the exciting news that in March 05 the Council offered to the Bureau to hold another ExCo in Australia – in early 2008. The ExCos involve total numbers of up to about 150, with about 80 to 100 delegates and officials. Because of the timing, it is most likely that we will hold the meeting somewhere in the Southern States, with the current favourite being Hobart. However, we are at a very early stage of planning. We shall keep you posted on progress, but will be looking for lots of volunteers and support to try to match the huge success of the Broome ExCo in 1999, which directly led to us being here for this meeting.

As I mentioned at the start, Greg and Steve have been in the thick of it. I thank them particularly for their support and patience during the many occasions when my focus has been elsewhere and they've kept the ball rolling.

This applies especially to the planning and financial arrangements for this excellent meeting. Where would we be without them – back at home instead of in beautiful Broome fulfilling my long held dream to have a meeting here?

Also many thanks to Jeffrey for doing a superb job as usual in organising the wines – we need you – and to the other Councillors who have helped with the organisation of the meeting and with chairing the excellent sessions. I hope and believe you will be taking away plenty of useful material from this meeting. Let your partners know that it is worthwhile attending these meetings from the business point of view, as well as socially

And now to the other local activities that have occupied the Council since the end of July last year.

Looking at my report to last year's AGM, there are two main issues that have taken our time – the website and benchmarking.

On the website, you've seen the excellent job that Bill, Noel and Charles have done, and I repeat my earlier thanks to them. With your approval now, and a few tweaks, we should be able to have the site up and running shortly. The challenge will then be in keeping it up to date, and we shall need input from you all on this to keep it current and informative.

On benchmarking, progress has not been rapid. We received a quote for a first stage of the survey from Duncan Hart, our main speaker at last year's annual meeting on the future of the profession, which was for more than I anticipated spending on the whole thing. We therefore turned to FMRC, who did the two previous surveys, and Paul and Charles have been active on that front. FMRC have provided a standard type of questionnaire for review, which was focussed primarily on law firms and was not really helpful, and they will not quote until that has been revised by us. It is very difficult for us to do this revision, especially given the general lack of interest in a survey by the larger firms.

There has however been consistent interest in a survey from the medium and smaller firms, and I thank Caroline Bommer for her input on this. We have heard more on benchmarking topics from the speakers yesterday and today, and Steve is now looking at progressing the issue with support from Paul and Charles. I hope I will be able to report more positively to you on this next year, but I fear that any progress will be without the involvement of the larger firms.

Other issues raised in my report last year that have had some action this year are:

- We received a reply in August 04 from Warren Entsch to my letter to him raising concerns about the NZ proposals to allow registration of overseas patent attorneys there and the ramifications for Australia. The reply noted our concerns but suggested that the issue was not of high priority, particularly as, under the proposals, any person applying to register in NZ must satisfy the NZ Commissioner that they have the necessary qualifications and skills. Certainly his reply was not supportive of our position.
- The association's response to the Professional Standards Board report on the regulatory regime for patent attorneys was filed in September 04. The response broadly supported IPTA's response and presented some additional arguments.
- Greg and I attended an ACIP meeting in September 04 on the crown user provisions of the various IP Acts, following Greg and Christian's reply on behalf of the association to ACIP's report on the topic.
- ACIP issued an options paper on Experimental Use Exceptions in December 04, following its original report, our reply and our meeting with ACIP reported to you last year. Greg and I prepared a reply to the options paper in March 05.

What of new issues?

One of the first issues Council had to deal with after last year's Annual Meeting was a complaint from a member. A reply to the letter was sent to the member in August 04, and nothing more has been heard about the complaint.

The year after the 2004 Annual Meeting also started with a bit of a surprise, in the nature of Mark Latham's comments on "bodgy patents". While the association did not make any direct statement on the comments, Council provided input to Malcolm's press release on behalf of IPTA.

Particularly through the early part of the year, we received enquiries from Dave Herald, as in previous years, regarding changes to the PCT. These have been fewer than in the past, partly as a result of the hold-ups in WIPO that I have already mentioned and probably partly due to Dave's pending retirement, but the enquiries have been ably dealt with by Noel.

Also on and off throughout the year, there have been discussions with IP Australia about the search results provisions, patiently handled by Greg and Leon Allen, on behalf of FICPI Australia and IPTA, respectively. IP Australia have recognised the need for change, and hopefully there will be some positive news on this front shortly.

In October 04, IP Australia forewarned us of its proposed changes to Patent Office practice when no IPER has been received by the time examination is begun. Greg provided major input on this, with Leon Allen on behalf of IPTA, and FICPI's reply was provided in November 04. As often occurs with IP Australia, the outcome was not entirely satisfactory, but some concessions were achieved and you have seen the results of the discussions in the Office's new practice.

Also in October 04, IP Australia requested input from us and others on the operation of the new Designs Act, and the association's reply was provided by Noel and Greg.

In November 04, FICPI's CET Group 5 (biotech and pharmaceutical patents) forwarded a questionnaire on the position with reach through claims in Australia. Council co-opted Michael Caine to reply, which he did the same month.

In December 04, there was extensive correspondence from FICPI's CET Group 4 (EU patent issues) on a proposal to support a move within Europe to allow freedom of choice for EU-based applicants in relation to search and examination procedures being carried out by national patent offices. As a member of Group 4, Christian had much input on this, but in fact the support died at the Seoul ExCo in May 04 when the topic was discussed and some FICPI EU delegates, notably from Germany, spoke strongly against the move. During the discussions, Malcolm spoke equally strongly against general freedom of choice moves. His concern was that such a move in Australia could lead to a weakening of IP Australia, which would not be to our advantage.

Also in December 04, ACIP issued a review of Trade Mark Enforcement. Greg and Jeffrey provided a response on behalf of the association in February 05.

Likewise, Greg and Jeffrey were active in December and January responding to IP Australia's Trade Mark Legislation Review Papers 1 and 3. Paper 2 had already been replied to by them, as noted in my report last year.

In February 05, IP Australia issued a Review of the Grace Period provisions of the Patents Act. There was some question as to the value of the review given that the FTA with the US requires Australia to have grace period provisions. However, in our reply in March 05, Greg and I emphasised the advantages of all grace period provisions around the world being identical – which they certainly are not at the moment.

In about December 04, NZ had issued its draft patents Bill. Noel was co-opted by IPTA to help with comments, and also provided separate comments on behalf of FICPI Australia in March 05.

Also in March, David provided a reply to a questionnaire from FICPI's CET Group 1 (trade marks) on the proposed revision of the TLT.

The same month, Noel and Robert Cross provided submissions in response to a questionnaire from FICPI's CET Group 2 (designs) on design protection for spare parts in Australia.

In May 05, IP Australia sought input on its evaluation of a test website on PBR. Council seconded Marita Gill from POF to respond on our behalf, with input from Greg.

Last month IP Australia's IP Rights Working Group issued an invitation to us to attend a meeting to discuss current activities on FTAs – presently being negotiated with UAE, Malaysia and ASEAN according to the note, as well as with China. The meeting in Canberra involved representatives from DFAT, IP Australia and the Attorney General's Department, and was attended by Paul on behalf of the association. It is likely these meetings will be ongoing, and we are hoping Paul will be able to attend them on a regular basis. In the meantime, he has just provided us with a report which we will consider at our next meeting.

Finally on matters handled by Council, and needing less input from us, Greg and I were invited to represent FICPI Australia at an ACIP cocktail party in Melbourne in early June. The party was held to thank respondents for their input to the various ACIP enquiries and to update us on their activities.

That brings us up to date. No doubt next year will be just as busy and your Council looks forward to representing you the members again. Our annual meeting next year will be a Special General Meeting with the possibility of elections for membership of Council. If any of you are inspired by this report, are keen to get involved, and even keener to work even harder than you do anyway, bear this in mind.

Where will the meeting be next year? We haven't discussed it yet. However, given that next year is a Congress year – in Paris in late May, with planning well advanced – it is possible our meeting will be a bit later in the year and guaranteed, for most of us, to be closer to home.

Lastly, I should just mention our membership. Greg and Steve are responsible for this, on top of everything else, but you are all invited to identify potential new members. I repeat Steve's thanks to all of you for the prompt payment of your subscriptions. Subject to any other members deciding to not pay their renewals in the current round, our numbers have remained steady over the year at 104 – although with two changes. Sadly Philip Macken resigned during the year, but the numbers were reinstated by a successful application from Chris Bird in Brisbane.

That brings me to the end of a long report of a hectic year. Thank you again Council for your successful efforts and thank you Council and members for your continuing support.

Peter Huntsman