

ETHICS & DISPUTES COMMITTEE

Convenor: Mr Leon Allen

The Committee dealt with over 20 complaints during the course of this year. The majority of matters have been resolved, however, at the time of writing this report several remain outstanding.

The matters brought to the attention of the Committee again included a number of complaints about billing practices and, more particularly, situations where clients claimed to not have been fully advised of anticipated costs or the extent of ongoing cost. This highlights the need for improved communication with the clients, particularly in relation to the anticipated long term costs of securing patent protection.

The Committee also dealt with several conflict of interest situations involving disputes between member firms, in addition to receiving some complaints from foreign attorneys regarding the slow payment of their bills by members. This latter matter is of some concern and has been addressed by recent amendment to the guidelines of the Code Of Ethics.

In response to requests for consideration of several matters by Council, the Committee has recommended a number of changes to the Code of Ethics guidelines. The recommendations were presented to Council and as a consequence, some new guidelines and amendments to earlier guidelines were passed by Council on 9 March 1994. The new guidelines are, at the same time of preparing the report, in the process of being incorporated into a consolidated reprinting of the Memorandum and Articles of Association and Code of Ethics.

The new guidelines adopted deal with responsibility for the payment of costs incurred on behalf of a client and the desirability of settling matters where settlement would be in the best interests of the client. Amendments to the existing guidelines clarify the definition of conflict of interest, particularly with regard to disputes involving joint applicants. The existing guideline relating to gratuitous circulation of information concerning specific items of intellectual property has also been refined.

FEES COMMITTEE

Convenor: Mr Colin Macauley

AIPO increased its fees on 1 July 1993. AIPO has now implemented accrual accounting and has moved to a Group 2 Trust account financial arrangement. Cost recovery still applies to AIPO and the increase was confined to an average of 2%. At the Committee's fee review we were pleased to have the Director-General, Andrew Bain, present to explain the various fee increases. We trust this valuable precedent will continue for future reviews. The most significant changes were the designation fees for each mark in series trade mark applications and the increase to 30 pages for base complete specifications for entry into the national phase. The downside to this page increase was the savage surcharge for each additional page.

AIPO has also instructed an independent consultancy to undertake a study of its fee structure and policy. This study was undertaken by ACIL who are economic, policy and strategy consultants. Meetings were held with ACIL and we are confident that ACIL were given a clearer understanding of the operational aspects of patent attorneys and the effect of fee increases on the filing behaviour of clients. AIPO is presently reviewing the consultancy study with reference to their economic models. This review is taking longer than expected, which will result in a delay in revising official fees. It is expected that new fees will be effective from October, 1994, and not July.

EDUCATION COMMITTEE (cont)

A Student Group was formed in Melbourne with secretarial assistance from the Institute. The Student Group organised eight tutorials on topics relevant to the examinations. We thank the Committee of Ray Tettman (Chairman), John Keogh, Peter Gretton, Janelle Borham and Stephen Anderson. Sessions were conducted by Ann Dufty, Sam Ricketson, David Herald, Roger Green, Greg Noonan and Malcolm Royal and the Committee thanks these people sincerely.

The Institute Prize was awarded to Dr Jenny Petering of Melbourne, following a recommendation by the Professional Standards Board.

Your Committee has maintained a Register of Attorneys prepared to talk at seminars and the like. There was a decrease in this activity during the year.

ETHICS & DISPUTES COMMITTEE

Convenor: Mr Malcolm Royal

The Committee dealt with a number of complaints during the course of the year. Almost all of these have been resolved.

The matters brought to the attention of the Committee included a number of complaints about billing practices and, more particularly, situations where clients claimed to not have been fully advised of anticipated costs or the extent of ongoing costs. While in each case the charge was justifiable, and in some cases lower than it could have been, it highlights the need for improved communication with clients, particularly in relation to the anticipated long term costs for securing patent protection.

The Committee also dealt with complaints from foreign attorneys regarding slow payment of accounts. Unfortunately one member did not respond to a number of requests for comment and information, leading to suspension by Council of his membership rights until the next Annual General Meeting.

FEES COMMITTEE

Convenor: Mr Tony Ward

In 1994, the Australian Industrial Property Organisation conducted an analysis of its cost structure in comparison with income from official fees. It was known that there were considerable cross subsidies and it was conducted that in certain cases these should be reduced. Consequently, in work intensive areas such as hearings, extensions of time and inter party disputes, the fees were considerably increased to reduce the cross subsidisation. In compensation, there was no increase in renewal fees and a small reduction in filing fees caused by doing away with the excess claim charge. The overall increase amounted to about 5%.

The Fees Committee decided to increase service charges by approximately 5% and these charges were implemented to take effect as of 1 October 1994. It is envisaged that the next full review of fees will coincide with the introduction of the new Trade Marks Act in January 1996.

SEVENTY-SIXTH ANNUAL GENERAL MEETING PRESIDENTIAL ADDRESS

Introduction

It has been a convention of this Institute for the past 75 years for the president to deliver an address at this stage and I welcome this opportunity.

Welcome to South Australia.

This State was probably the first in the world to officially recognise the profession of Patent Attorney in December 1877 and my own firm is proud to have been associated with that commencement. It is very pleasing to have this meeting of nearly 200 registrants in Adelaide 118 years after this birth of recognition of this great profession.

I intend to talk briefly about the committees, then about ethics and guidelines and finally on the significant problem of costs and certainty of outcome with patent litigation.

Thanks to Committees

The committee system has worked well again this last year and all of us have to thank the significant number of people who toiled largely unseen and at their own cost on a variety of matters. Our Institute is so much the stronger for this and to all of you who have toiled so hard and so well I extend our very grateful thanks.

My own role has been made so much easier and in fact possible because of the always positive and helpful responses from members when I have asked for things to be done and I have been able to rely upon the constant willing and helpful support of the secretariat both Jenny and Janelle which makes all these things really possible.

Our Ethics and Guidelines

Our ethic and guidelines are an important part of our Institute. A number of possible breaches of these have been brought to our attention over the last year. In almost all cases the issue has been resolved satisfactorily. However, Council has in the past year had to act more strongly. Without a guiding philosophy the Institute may well be regarded as a self interested old boys (or girls) club. I say to all members that I with Council regard the matter of breach of our ethics and guidelines very seriously and will continue to act in the interests of us all where necessary. However, there can be different answers to different problems and the role of Council is not foremost to be in any sense a policeman or a bully.

Let no one be mistaken however that it is a toothless tiger.

If you think the rules are not fair or do not make sense then go about getting them changed by putting the case to your favourite councillor or to me or lobby in general. This is your organisation and the rules can be changed. This is a healthy and fair process. What is not fair is where some adhere to the rules and others push the rules to the edge or ignore them without bothering to do something positive.

DATA PROCESSING COMMITTEE

Convenor: David Griffith

Implementation of the new Trade Marks Act brought with it a relatively minor number of problems, most of which were readily resolved with the help of officials of the Trade Marks Office and the MIS Department of the AIPO.

We also encountered a number of data entry problems in the capture of original patent filings that caused some cases to have incorrect filing dates. Since this was pointed out to the Patent Office, systems have been put in place, as much as is reasonably possible, to provide error checking. The Commissioner has been very helpful in responding to any situations such as these as they arise.

The Trade Marks Office has been trialing a new CD-based combination image and data trade mark database which is based on a Canadian product. We think the Office anticipates producing this CD on a regular basis later in the year. Please do not hesitate to draw any data processing errors of the Patent Office and Trade Marks Office to our attention as we always receive excellent co-operation from the Office.

EDUCATION COMMITTEE

Convenor: Malcolm Royal

Two series of confravision tutorials were arranged for students undertaking the Professional Standards Board examinations. All eight subjects were covered. Again, tapes on lectures given on patent law were distributed to students. The Secretariat also arranged for the distribution of test exercises for assessment by examiners.

The Institute Prize was awarded to Leah Taylor of Melbourne, following a recommendation by the Professional Standards Board. Vice Presidents John Slattery and Malcolm Royal remain elected members of the Board.

The South East Asian Drafting (SEAD) Course was initiated in Singapore in February 1997. The direct involvement of the Education Committee as such will begin when the first course is ready for assessment in August 1997. The Institute receives regular reports from the FICPI Committee.

The Staff Exchange scheme with the Patent Office has continued throughout 1996/97.

ETHICS & DISPUTES COMMITTEE

Convenor: Tony Ward

This Committee has again been busy. The Institute Secretariat receives many enquires and potential complaints. The Committee endeavours to return calls as promptly as possible and often a return phone call is enough to put the complainant's mind at rest. In the event of a serious complaint, the complainant is asked to make a complaint in writing at which time the attorney is asked to reply in writing. Some complaints have been resolved and others remain active.

The main source of complaints relates to charging. The profession needs to review the manner in which new clients are introduced to the charging regime of the attorney in question. The Committee suspects that if more information was given to clients at the outset, especially with regard to charging, there would be considerably fewer complaints. New clients also need to have some idea of the likely on-going costs. It is also perhaps worth commenting that there are a few members of this Institute that are the subject of the majority of the complaints.

ETHICS & DISPUTES COMMITTEE

Convenor: Tony Ward

The Ethics & Disputes Committee continues to field enquires and complaints from clients of the patent profession as well as practitioners within the umbrella of the Institute. Members of the public who take the trouble to either complain to or request information from the Institute Secretariat expect a prompt reply. This Committee endeavours to provide this service and often a short telephone discussion will satisfy the party to the extent that the matter becomes closed. With a more serious complaint, the complainant is asked to put the complaint in writing. This documentation is then forwarded to the subject of the complaint with a request for a prompt written reply. In most cases, members cooperate willingly. However, there are a few members of this Institute who are reluctant to reply within a reasonable period. These delays frustrate the complainants and serve only to place the profession in a bad light. The Committee is very cognisant of the potential consequences associated with complaints that go to the Professional Standards Board. This Committee, with its less formal and less rigid procedures, sets out to defuse serious conflicts so that a mutually satisfactory settlement can be reached without the matter reaching the more formal and public forum of the Professional Standards Board. Members are asked to consider this objective when responding to the Committee's request.

FEES COMMITTEE

Convenor: Leon Allen

In the middle of 1997 the Fees Committee conducted a full revision of the Suggested Charging Guide. The revision was accepted by Council and a new Suggested Charging Guide dated 1 July 1997 was issued. Towards the end of 1997 IP Australia announced a revision of Official fees. This revision included the reduction of some fees and the abolition of other fees. The Fees Committee has prepared and issued a further revision of the Suggested Charging Guide to reflect these changes.

FINANCE COMMITTEE

Convenor: Colin Macauley

The Balance Sheet for 1997 shows a net surplus of \$38,165.00, as opposed to the net deficit of \$63,069.00 for last year. A further turnaround was a profit of \$10,055.00 for the annual conference in Hobart, compared with a loss of \$1,388.00 for Melbourne.

The levy has now been withdrawn and our cash reserves are now being rebuilt. The subscription fees were not increased for the 1998 financial year.

The shifting of office premises and updating of office equipment will cause additional costs not envisaged in the annual budget for the 1998 financial year.

SECRETARIAT COMMITTEE

Convenor: Colin Macauley

This report is usually very short and consists of a large vote of thanks to Jenny and Janelle. The vote of thanks is given but Jenny and Janelle are no longer with us to receive it. Jenny has retired to Perth with her husband, Bill, and Janelle has decided her future is elsewhere. We were very sorry to lose Jenny and Janelle and wish them well for the future.

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