

PRESIDENTIAL ADDRESS
98TH ANNUAL GENERAL MEETING
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Before composing this address, I asked one or two attorneys at my firm and some of the Councillors what I should talk about. They suggested change, so change it is, and there's certainly quite a lot of ongoing changes which will affect the profession which I can talk about. I'm going to talk about three changes in particular.

But first before looking at those three changes, I thought I might introduce a bit of change to the traditional address and introduce my own novelty – a picture based competition. You can blame Michael Caine for this. Michael told me I had to do something to make my speech memorable, such as witty catchphrase. The bar for witty catchphrases was set impossibly high some time ago with Tony Ward's infamous bloated corpse address. Now, those of you who were at the Gold Coast may recall that at least for myself, including a few pictures makes an address or presentation more memorable - even if you don't necessarily remember the content of what was said – you at least remember the pictures.

This won't take long so if you're not a fan of competitions and think I should be focussing on the address, I apologise in advance and beg your indulgence..... it will only take a couple of minutes. Also, the photographs do tie in a little with the address

I'm going to ask you to make a connection between three pictures...

So, here's a first picture...Donald Trump, or more precisely, and as patent and trade mark attorneys we have been taught to be precise, an actor Alec Baldwin doing his excellent impersonation of Donald.

Here is the real thing – this is the first of the three pictures that you will need to link, if you're playing..... ignore Alec Baldwin.

Here's the second – a clown – some of you are thinking this is going to be easy, but I assure you it's not as simple as it may seem...

The third picture is a car... sorry not that car.... this car.

So, to recap here are the three pictures – Donald Trump, a Clown and a Car.

I am looking for one specific word connects the three pictures. There is only one correct answer. You may be able to think of a different word that connects the three but if it's not the word I am thinking of it's not the right answer. Email that single word in the subject matter line of an email to my address – the winner will be the first correct answer to reach my inbox. You don't need to explain the connection. There may or may not be a prize. I'm expecting a few correct answers before the end of my address, but if not, the competition may remain open until the start of the gala dinner. Or I may just tell you the answer in 5 minutes time. I'll flick the pictures back to leave Donald Trump up there for a moment as inspiration while I move onto the address proper.

2.

We are as a society of course undergoing massive change at present as we move from an industrial based society where people had jobs for life, particularly blue collar workers, to a more knowledge based society where employment is more temporary and mid-life career change and re-training much more likely.

However, as we are a very focussed audience I'm not going to look at the big picture but I want to focus more on the more specific changes that may affect our profession in the coming years. I also think – perhaps I'm being complacent – perhaps it's because I'm older – that our profession is one where the skills are very relevant in the knowledge economy and our profession is likely to survive and prosper and remain relevant.

We have recently attended a very lively business session at which Andrew Christie presented, in which we looked at possible changes to the Code of Conduct. Those changes were the result of another significant recent change to the profession which is the result of the incorporation and public listing of a number of patent attorney firms and well as the ownership structure in which a listed holding company owns a number of separate patent attorney firms.

Now I joined Council in 2000, 17 years ago. My first committee was the rules committee. One of the items on my agenda when I started was incorporation of patent attorney firms and I was encouraged to progress this issue as it had in fact been promised that the profession would be allowed to incorporate, once it had a formal Code of Conduct.

John Swift ran the PSB at the time and didn't seem all that keen on progressing incorporation. He certainly didn't seem to favour change in that area.

Anyway, we carried on regardless, I looked at the different business models that other incorporated professions had, I corresponded with Ian Murgitroyd at Murgitroyds in Scotland who had incorporated (and listed his firm) and visited his firm as part of my research, we looked at what the professional indemnity insurance requirements might be for an incorporated firm to protect clients, should that be actual monetary values, and the issue dragged on somewhat, until Jayne Turbayne took over at the PSB. Jayne was much more open to change. We met with Jayne on a number of occasions, focussed positively on how the change might be implemented in the act and regs, and to cut a long story short, incorporation for patent attorneys finally came into effect with the raising the bar changes – some 13 years after I first started working on it and many years after it was first contemplated. That shows that change can take many years to come about.

Change can also be very rapid. Sprusons incorporated quite soon after incorporation became available, and listed on the ASX via IPH a little over two years ago - a few months before I became President. Since then another seven Australian firms have either listed themselves or joined one of the listed entities. I don't know the exact figures but I think around 50% of the registered patent and trade mark attorneys in Australia now work for one of the listed entities including most of the biggest patent and trade mark attorney firms in Australia.

I stress that I'm not expressing a view on whether I think that is a good thing or a bad thing for the profession. IPTA's role is to represent all of its individual members whatever business structure they work in. We need to bear in mind that it is the patent and trade mark attorneys of Australia that are members of IPTA, not the businesses they work for.

3.

What really interests and fascinates me is the **scale** of the change in ownership that has occurred in our profession. Let's compare our profession with other professions such as the lawyers and accountants. Obviously particularly in accountancy there has been a move to an incorporated structure for a number of very good reasons such as tax, liability etc. However, those incorporated accountancy firms are owned by professionals who work in the firms and service their clients, not by external shareholders. A few accountants/financial planners have listed in the past somewhat unsuccessfully and one or two may survive I think one or two went into administration. Of course, in the law area there have been a couple of listings Slater and Gordon who made a disastrous acquisition a couple of years back and are now in serious debt and look likely to go through a restructuring which will wipe out their shareholders, and Shine lawyers who are hanging on in there just.

However, in the overall big picture view of the legal profession in Australia firms like Slater and Gordon and Shine lawyers are almost irrelevant. What has happened to our profession is the equivalent of the majority of the big law firms – Baker McKenzie, Clayton Utz, DLA Piper, Mallesons, Allens, Freehills Herbert Smith all incorporating and listing on the ASX. Obviously, those law firms are going through changes but those are more in the way of global tie ups with overseas law firms, which is where they see their future.

So, in Australia, the listed firms have achieved what one could call a critical mass over a very short period of time. A new entrant to the profession starting today is more likely to start at a firm that is majority owned by shareholders rather than by the professionals who service the clients and run the business. Obviously early on in the listing process, many of the major shareholders are also the professionals but over time that connection will diminish as the original owner-shareholders retire. That connection is also somewhat dislocated by the fact that the shares are in a holding company.

It remains to be seen whether the advantages of listing – such as better access to capital, which in turn may provide more scope for expansion by merger, expansion into related fields, a management with a focus on return on equity for shareholders, costs and the like, rather than catering to the whims of individual partners will **trump** (that word again) the advantages of having the professional as owner of the business and the ability to recruit using that eventual ownership as an incentive.

I don't pretend to predict the outcome, but I will watch it with interest. Perhaps both type of structures will prosper together. I very much hope that whatever happens, the change does not diminish the profession or the Institute that I have had the pleasure of serving for the past 17 years.

I have made a number of very short addresses in my time but this one isn't one of them as I now have to move on to talk about changes arising from the Productivity Commission's report.

Now seems like a good time to change the picture to this one!!!

I expect most of you will have seen the PC final report. There will be changes arising from the report. The likely changes will be outlined in the government response, which will issue probably some time in June. I apologise if I duplicate anything Patricia has said earlier today however I wrote this before I had the benefit of listening to her presentation and also this address will go to the membership as a whole not just to this meeting.

Some of those changes will be for the better. For example, the long awaited but somewhat inadequate and limited improvements to the Designs system can be expected to be recommended, including the grace period which is probably the most significant and useful improvement.

4.

My understanding is that the response will be in two stages. Those changes that the government think have been discussed enough already will be in a first early bill for which there will be little consultation as to its aims – perhaps only in the execution.

Then there will be a second later bill, which will address changes that are considered to require more consultation – such as possible changes (read neutering) of the patent term extension for pharmaceuticals.

The “change” I would like to focus on relates to the innovation patent. IPTA has a considered position on this which I am happy to share with any members, which is essentially that it should be changed – for the better as recommend by the expert body ACIP and **retained**. Indeed, the Full Federal Court has only recently initiated it’s own change to the IPS by clarifying and limiting when damages can be claimed for infringement of a divisional patent application. That was seen by many particularly in the legal profession as a huge negative for the IPS.

Unfortunately, rumour has it that the change that the government will recommend is to abolish the system altogether, despite the majority of the submissions made to the PC being to fix and retain it.

That is one of the reasons why myself, Michael Caine and Grant Shoebridge took a day out of the office last month and travelled to Canberra to lobby the minister Craig Laundy, to retain the innovation patent. We also addressed inventive step and PTEs but those issues are not as immediately pressing.

Now the minister is relatively new to the portfolio and has many different responsibilities. Unless he or his advisers are of the view that there might be some negative impact from abolishing the IP he is likely to simply do what the Productivity Commission recommends unless IP Australia provide support for retaining the Innovation Patent System(IPS).

Those of you who have local clients who use the IPS and who are interested in trying to save it need to persuade them to write to the Minister and lobby him to retain it. Even better, if they have a local liberal or national MP particularly in a non-safe seat, they should also write to their MP.

Any lobbying needs to identify the writer and why Craig might care about them – e.g. Australian SME employing voters, how the IPS system has helped them protect their innovations against perhaps overseas based competitors, provided a platform for expansion overseas etc...We need success stories – evidence that the IPS is not the dog with fleas it’s being made out to be.

We need a critical mass of users of the system writing in over the next month. They don’t have to be articulate but they should be genuine and relevant.

If we do nothing, the Innovation Patent System will become the Norwegian Blue of the Australian IP landscape. To be honest it may already be dead, but like Michael Palin, I continue to hope we can save it.

I will make a final change to the picture before very briefly talking about e-PCT which is another change which will affect us all.

As you know WIPO recently toured Australia with their travelling roadshow which visited Sydney, Melbourne and Perth. It was well attended in Sydney and I was very impressed by their demonstration of the e-PCT system. For a number of our sister organisations e-PCT is a big concern – if it is going to be enabled for National Phase Entry. JPAA are particularly concerned for various reasons. CIPA are less concerned and see the patent system as something which is there for the benefit of applicants and not a source of work for patent attorneys and patent offices.

5.

WIPO's role is to streamline and make obtaining patents around the world more cost effective and easier. While e-PCT if implemented by patent offices to allow applicants to conduct their own national phase entry may appear to be a change which will threaten our profits, the news is not all bad. WIPO want the patent attorney profession to be involved in the patent application process. They want applicants to have valid strong patents and to enable that they appreciate that patent attorneys need to be included in the process. They are not looking to cut us out. They know how important our role is in the patent application process. E-PCT will put pressure on filing fees but these have been under pressure since the GFC and most firm have I think significantly reduced their reliance on service charges for filing applications. If filing becomes cheaper cashed up applicants may look to file more widely and more PCT's may enter the National phase in Australia.

I originally trained and qualified in the UK where the introduction of the European patent system in 1978 had been seen as a major threat to the UK profession resulting in a fall in recruitment and training whereas in fact it was an enormous boost to the profession's profitability as most applicant's particularly US and Japanese chose to use English speaking German or UK attorneys who were seen to be better practitioners than those from some other EPC member states.

Also, while WIPO are keen to roll out e-PCT, we know change can be slow. WIPO understand that there are stumbling blocks such as the payment of fees in different currencies and the ability of some key patent offices to connect their IT systems to WIPO e-PCT system. It's unlikely that e-PCT will be viable unless the major patent offices such as the USPTO are on board. And seguing back to where we started with that man Donald Trump in charge leading a more inward looking USA it's difficult to see much push from the US government for this type of initiative.....

That is where my address officially finishes but

If you could just bear with me for a moment I will check and see if we have a competition winner....

Thank you

Jeremy Dobbin
President