

TRADE MARKS AND DESIGNS CONSULTATION GROUP
17 April 2018
MEETING SUMMARY

The Trade Marks and Designs Consultation Group meeting (TMDCG) was held on Tuesday 17 April 2018 in Melbourne. Below is a summary of what was discussed at the meeting.

The Chair updated the group on business performance in the Trade Marks and Designs space.

IP Australia's Domestic Policy and Legislation Section then gave a presentation on the economic analysis of the *Hague Agreement Concerning the International Registration of Industrial Designs* (the Hague Agreement), which was done with IP Australia's Office of the Chief Economist. This analysis followed the Review of the Designs system conducted by the former Advisory Council on Intellectual Property (ACIP), in response to which the Government agreed that IP Australia would investigate the implications of Australia joining the Hague Agreement. The Productivity Commission more recently stressed that this investigation should include a cost-benefit (economic) analysis. The Members were asked to provide feedback on the economic analysis.

Domestic Policy and Legislation Section also gave an update on policy and legislative activities including IP Australia's forward legislative agenda. Legislation to implement Productivity Commission related reforms was introduced into Parliament on 28 March 2018 and is awaiting debate. A second bill of Productivity Commission related reforms, which includes proposals that relate mainly to patents, is currently with the Office of Parliamentary Counsel for drafting and is intended to be introduced into Parliament in late 2018 or early 2019. A third bill intended to contain proposals to implement the Government's response to the ACIP Review of the Designs system will follow.

Bronwen Shelley updated the group on Hearings and Oppositions matters, noting that 1151 oppositions had been filed to date this FY. Some members also reported delays in the issue of 'Notices to Produce' which Bronwen offered to follow-up.

At the request of a Member, three practice issues relating to Examination were discussed:

1. The unnecessary practice of requiring evidence of use to satisfy the Registrar for the purposes of section 44(3)(b) of the *Trade Marks Act 1995* when a declaration of use would probably suffice. That the Manual should be changed to clarify practice in this area.
2. Office practice in applying the *Cantarella* decision.
3. The impact of the case of *Pham Global* on Office practice and what does "dominant cognitive cues" mean?

In other business, some stakeholders reported difficulties with Objective Connect. IP Australia apologised for the difficulties they are having and said IP Australia is dealing with the issue.

An Information paper on enforcement of foreign judgements was discussed and focus was on the fact that this is a whole of government approach, led by AGD and may be controversial in a number of spaces (not just IP). IP Australia continues to contribute to the discussion on this and has raised concerns with AGD. Members were urged to make submissions if they had concerns.

The next TMDCG meeting will be held in Sydney in November 2018.