

PRESIDENTIAL ADDRESS
99TH ANNUAL GENERAL MEETING
19 April 2018
The Langham, Victoria

I and Council warmly welcome you to the 99th AGM of IPTA, born as The Institute of Patent Attorneys of Australia almost exactly a century ago.

A Little History

Looking back through the history of our profession, I am struck how some themes have remained constant over 100 plus years. Certain family names: Hack, Fitzpatrick and Callinan for example (and apologies to any I have missed) and Waters – our first President – also echoes in my firm's name: Watermark. The largest firms and some of the smallest have been there from colonial times.

On 13 May 1918, a combined meeting of the Australasian Institute of Patent Attorneys and the Association of Patent Attorneys resolved 10-4 to form a united corporate and representative body of the profession soon called The Institute of Patent Attorneys of Australia (IPAA) and to draft a Memorandum and Articles of Association for IPAA. IPAA's foundation meeting was held on 4 October 2018 and a constitution similar to that of the Chartered Institute of Patent Attorneys (CIPA) was adopted. IPTA enjoys a good relationship with CIPA to this day and having CIPA's President, Stephen Jones, at our conference is evidence of that.

Initially, IPAA had two competing associations, the Australasian Institute of Patent Attorneys and the Association of Patent Attorneys of Australia. By 1932, these very small – but still influential – associations had amalgamated with IPAA to become the united representative body that the 1918 founders envisioned and which continues to this day.

IPAA, now IPTA as we recognised the important role of Trade Mark Attorneys, has had a rich history with a cast of characters and consummate professionals, these not necessarily being alternatives! Tony Ward might reflect on some of this history at our Gala Dinner tomorrow night. We have been able to prepare a small but professionally curated exhibition which tracks this history. IPTA Council thanks the contributors to the exhibition as well as Linda Tocchet and Jennifer McEwan for organising it. Do go and see it if you have not already.

The Innovation Patent

When any complications come up in patenting or perhaps patent policy, Dickens – as usual – has something to say.

Dickens, *Poor Mans Tale of a Patent* (1850), writes:

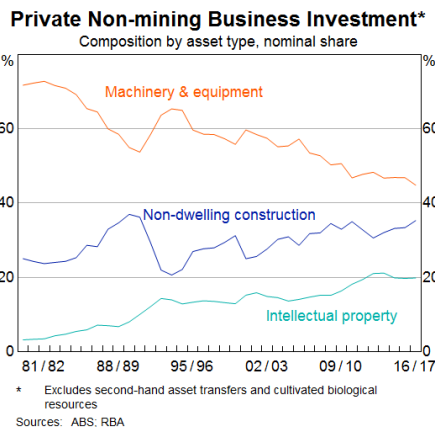
Nobody all through [was] ever happy for their money, but all uncivil...Is it reasonable to make a man feel as if, in inventing an ingenious improvement meant to do good, he had done something wrong.

Actually, our patent system is a model of civility and we appreciate our cordial relationship with IP Australia. However, the second part of this sentiment resonated with me as I prepared this address. I thought of the SMEs and inventors who have made incremental but important innovations on which their business has been built. Those SMEs and inventors have told us that, have written to us saying that. I am thinking here of the innovation patent and its importance to incremental innovation. Those inventors and businesses shouldn't feel as if they have done something wrong. IPTA is working to make the innovation patent better, not abolish it at the first sign of trouble. As you know, New Zealand is considering analogous Advancement Patents. Second tier protection is the future and it's here to stay.

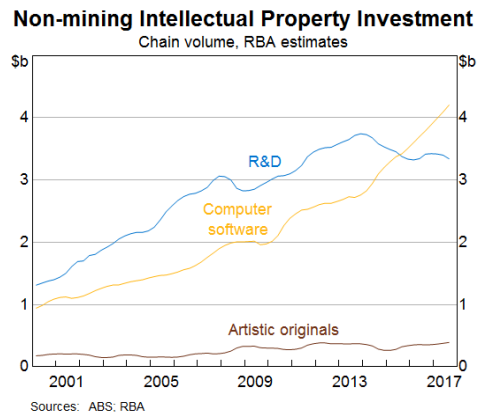
Some Economics!

As I read *A Lucky Profession*, a book commissioned by IPTA and written about our profession 25 years ago, there are some great stories. One of them is the central importance of the patent profession during the Second World War and the early postwar era. The profession – and the Institute – were key players in innovation. Some issues have not changed and it was remarkable to read of Sir John Monash addressing the Institute in the 1940s on the *Economics of Electricity Supply*. Several Fellows of the Institute had been involved in patenting inventions relevant to electricity supply and they were keenly interested in the topic as a matter of policy as well as at the professional level.

I'm no Sir John Monash of course but I think that economics remains important to the IP profession and can, thankfully, be reassuring. Philip Lowe, Governor of the Reserve Bank of Australia, spoke in March on the Changing Nature of Investment and here are a couple of graphs from that speech:



Graph 1



Graph 2

Bureau of Statistics (ABS) and RBA figures clearly show that intellectual property is rising as a share of private non-mining investment. IP represents about 20% of this investment. I know we are likely broadly aware of this statistic but restating it shows the importance of innovation and of course the IP profession.

In Graph 2, the ABS and RBA break the intellectual property figures down into three components: R&D investment, computer software and artistic originals. The latter of course represent the copyright domain for the most part.

Now, for sake of argument and acknowledging the sensitivity of the topic, let's look at that computer software graph. How tempting it is to infer that computer software does not require incentives from the patent system because it is self-sustaining and powering ahead, all on its own. But there are two possible light bulb moments here, no incentive needed and a second one, perhaps that the rate of growth of computer software investment might have risen faster and further if patent incentives had been available and we had not been caught in a potential pre-*GEC Application* (1944) return to case by case subject matter analysis. The application of s 18(1)(a) is a problem for us as a profession and I believe for IP Australia as well. This is an opportunity for us to work together to resolve the issues and continue the close working relationship for so many years and which is acknowledged in *A Lucky Profession*.

Those graphs do not reflect the importance of brands. However, it is more than likely that a substantial proportion of computer software investment is brand dependent. Brands are important for every business and everyone as are the complementary trade marks.

Our Profession today

What a lot of change there has been over the last 4 years. We now have incorporated and unincorporated firms as well as listed and non-listed firms. I recognise that views on this are divergent and sincerely held. However, we are a small profession, we need to work together and it is important to make a case fairly and acknowledging the other side of the debate. In the end, our duties are not different. We are one profession with the same opportunities and challenges and we work together well at the professional level.

Accepting that there have been differences of view (and back in 1918 these seemed particularly rancorous), evidence I like to think of a creative profession, it is important to avoid unfair discussion. We remain a small profession with important – sometimes complex – arguments to make and competing professions and organisations will inevitably take advantage of perceived 'unrepresentativeness' or, worse, divisions when developing IP policy.

The Lucky Profession

Are we the lucky profession? I think in many ways that we are, at least in the interesting and valuable nature of our work and the quality of our social relationships but the question should cause us to reflect as it has done for half a century. In that way, we become better placed to reach genuine halcyon days where the profession is central to technology development in Australia at both technical and policy levels. Technology is constantly evolving as we know and a past US Commissioner of Patents learned to his cost. Not everything had been invented in 1899 or now. In the *Fourth Industrial Revolution*, technology remains critical and so must our role as patent attorneys. IPTA is working on promoting our role and we currently reflect, through our *Future Directions* project, on how we can further develop in tandem with our members into the future.

Future Growth

I want to finish our 99th AGM on a positive, even uplifting, note. As the RBA charts indicate, IP is trending upwards. Intangibles are on the advance and Australia is an inventive nation to begin with.

I see increasing volumes of local work, not necessarily confined to larger organisations but the thousands of SMEs we have. And everyone needs their brands. There truly is a lot of work out there, a lot of need for our services.

International harmonisation carries risks but of course it also assists our clients to grow their businesses internationally as the *Paris Convention* of 1889 and the *Patent Co-Operation Treaty* have assisted IP rights holders to do before. These trends, taken together, augur well for the next hundred years of our profession.

Conclusion

Thank you all for being here and I wish IPTA and us all as members a happy centenary and an educational and enjoyable remainder of the conference.

Thank you

Richard Baddeley
President