

Mr Stephen Wade
Minister for Health and Wellbeing
SA Health
Level 9, 11 Hindmarsh Square,
Adelaide, SA 5000

By email: ministerforhealth@sa.gov.au

Dear Mr Wade

RE: Urgent - Impact of Stage 4 restrictions on patent attorneys and trade marks attorneys.

I write to you as the President of the Institute of Patent & Trade Mark Attorneys of Australia (IPTA), the peak body representing patent and trade marks attorneys in Australia.

Patent attorneys and trade marks attorneys practice in intellectual property law and are regulated by the Trans-Tasman IP Attorneys Board (www.ttipattorney.gov.au) and subject to Code of Conduct for Trans-Tasman Patent and Trade Marks Attorneys 2018 (www.legislation.gov.au/Details/F2018L00031). Importantly, patent attorneys and trade marks attorneys are not required to be “legal practitioners” as that term is defined in the Patents Act 1990 (Cth) or The Legal Professional Uniform Law Application Act 2014 (Vic), although they are subject to analogous rules of professional conduct and ethical standards.

Australian patent and trade marks attorneys are extremely important to the Australian economy, assisting many local companies to protect their intellectual property (IP), whether that be in the form of patents for inventions, trade marks, designs or other IP rights, in Australia and overseas, thereby helping them compete locally and in the global market place. Foreign companies also rely on Australian patent and trade marks attorneys to gain protection for their intellectual property in Australia, giving them the confidence they need to bring their products and technologies to Australia for the benefit of Australians.

As you will no doubt be aware, from 11:59pm on Wednesday 5 August 2020 all businesses operating in the Melbourne metropolitan region became subject to stage 4 business restrictions. Under these business restrictions employers in metropolitan Melbourne that needed their staff to attend a work site were required to issue worker permits to their employees. Only employees at permitted workplaces were able to access childcare.

Unfortunately, patent and trade marks attorneys were excluded from the list of permitted workplaces, although under the heading “Justice Specific” appeared the following activities for which worker permits may be issued:

- Administration of justice matters by legal practitioners for their clients where the matter cannot be undertaken reasonably and/or the client cannot participate reasonably in an online communication, teleconference or by means of an audio-visual link facility.

The work of patent and trade marks attorneys in connection with activities associated with securing, maintaining, and enforcing rights available under the law, in particular IP rights (such as patents,

designs, trade marks and plant breeders' rights) available under the laws of Australia and overseas, or providing advice in connection with avoiding infringing such rights granted to others, is, in our view, entirely analogous to the work of legal practitioners in administration of justice matters, with the possible exception that deadlines for patent and trade marks attorneys to take actions to secure or maintain intellectual property rights are enforced more rigorously.

In this regard the failure to take an action by a specified deadline in connection with an application for an IP right, or in maintaining an IP right, can result in the irrevocable lapsing of that right. These are rights to which individuals, companies, Universities, research institutes and the like are entitled under the laws of Australia and the laws of overseas jurisdictions. Obtaining, maintaining and enforcing such rights, with the assistance of patent and trade marks attorneys, are extremely important for these entities, for the viability, profitability and success of many Australian businesses, and for an Australian economy in relation to which innovation is a key component for success.

As with legal practitioners, there are various actions that may need to be taken by patent and trade marks attorneys for their clients "where the matter cannot be undertaken reasonably and/or the client cannot participate reasonably in an online communication, teleconference or by means of an audio-visual link facility". Examples of such situations would be:

- where the retrieval of a paper file is needed to allow the patent attorney or trade marks attorney to view material necessary for that attorney to advise a client on a particular matter;
- where an original document signed and witnessed (and possibly legalised at an appropriate consulate or Government office, or Notarised) must be collected from the office so that it can be transmitted to a foreign patent or trade mark office to meet a requirement by a specified deadline; or
- where the signing of a declaration, document or authorisation of agent or other document needs to be witnessed, due to requirements for a local or overseas jurisdiction where electronic signing and witnessing is not permitted.

In light of the developments in Victoria, and on behalf of our members, I request that if in the very unlikely event South Australia is put in the position of implementing restrictions similar to metropolitan Melbourne's Stage 4 restrictions, that patent attorneys and trade marks attorneys be permitted to carry on their work, observing all public safety requirements, so that the rights of their clients can be safeguarded during that period. This is something patent and trade marks attorneys are required to do under Commonwealth law and the Commonwealth Code of Conduct.

While most of our members can operate their practices from home, and without the need for childcare, there are some members whose particular circumstances require them to be in attendance at their offices, or to be able to access childcare:

- For example, one of our members is a sole practitioner, a Director of her company which is founded on her practising certificate, and a single mother of a young child trying to run her business with excess of 500 active pending matters. And under the current Victorian restrictions she does not qualify for childcare!
- We have other firms that operate with paper based records and files that cannot be effectively managed from home.

- Unlike lawyers that often work on one or two matters at a particular time, patent and trade marks attorneys are often required to handle in excess of 20-30 matters/files per day, making it impractical to carry files home.
- The work of patent and trade marks attorneys is also very much deadline driven which creates an added level of stress, even in the absence of Stage 4 restrictions. This is explained in more detail in the attached 2018 paper entitled "Mental health in intellectual property – breaking down barriers" by Andrea Brewster OBE from IP Inclusive in the UK that highlights the stressful nature of our profession.
- There is also the issue of confidentiality of the files that must be maintained, which could be adversely impacted if files are transported and taken off site. As you would also appreciate, patent and trade marks attorneys take the matter of confidentiality of their client's information extremely seriously, as they must to comply with the Commonwealth Code of Conduct.

We trust that by bringing this information to your attention at this early stage we will avoid the difficulties and stress currently being experienced by our members in metropolitan Melbourne.

I would be grateful if you could acknowledge receipt of this letter, and after consideration, confirm that the situation of patent and trade marks attorneys will be taken into account should it prove necessary to introduce Stage 4 restrictions in South Australia. Of course we sincerely hope that this will not prove necessary.

Yours faithfully



Michael J Caine
President
Institute of Patent and Trade Mark Attorneys of Australia

19 August 2020

Mental health in intellectual property – breaking down barriers

The often-hidden blight of mental illness is something that can affect anyone, especially those in a highly pressurised working environment such as the IP industry. We look at how best to recognise and address these issues for the benefit of the entire sector.

Mental illness is frequently referred to as the 'last taboo'. This is because, despite an undeniable increase in awareness surrounding mental health disorders, many people still struggle to be open about their internal battles.

It is widely recognised that mental illness affects millions of people globally, with one in four suffering every year. According to figures from the Global Burden of Disease study, around 268 million people worldwide were diagnosed with depression in 2016, while 275 million were living with anxiety disorders.

One factor which is frequently associated with the development of mental health issues is work-related stress, something with which professionals in the IP industry are familiar.

Long hours, complex cases, rising expectations and vast workloads can all result in elevated stress levels which contribute to anxiety and, if ignored, can lead to depression.

A 2017 Health and Safety Executive study showed that the legal profession is the third most stressed in the United Kingdom, behind only welfare professionals and nurses and midwives. Figures show that 27% of the calls made to charity LawCare, which supports mental health and wellbeing in the legal profession, are stress related.

Helping to support the wellbeing of IP and legal professionals, IP Inclusive was created to bring together organisations from across the industry to promote greater diversity and inclusivity in the profession.

The founding members of the taskforce include the Chartered Institute of Trademark Attorneys and the Chartered Institute of Patent Attorneys (CIPA) – the taskforce is headed by the author of this article.

Intellectual property can be a highly pressured working environment. IP attorneys and those in the legal profession are more at risk of stress as they often have Type A personalities, which includes being highly motivated, a perfectionist, impatient, controlling and competitive. Stress levels are then exacerbated by long hours, high workloads, target-focused appraisals, the perceived need for self-sufficiency and a fear of making a mistake.

By recognising and addressing mental health problems in the workplace, removing the stigma associated with them and building each other's resilience to cope with stress, we can create more inclusive workplaces where everyone can flourish.

With this in mind, what can patent and trademark attorneys in the IP profession do if they are concerned about their own or others' mental health?

Recognising the signs

Often those under pressure may be unaware that they are reacting or behaving out of character. As stress builds within a role, a person may begin to demonstrate physical or emotional symptoms as they attempt to internalise their issues and cope without support. However, for those around them, this could be the first warning sign of a mental health disorder.

Common physical and emotional indicators which point to growing mental health issues include fatigue, over-tiredness, headaches and mood swings, as well as becoming hyperemotional and obsessive.

Attorneys who begin to recognise these signs in themselves should seek help immediately in a bid to minimise the effect on their mental state.

Many people may experience tiredness or mood swings and become emotional at work on a regular basis. While this is not always an indicator of developing mental health issues, when these types of symptom are demonstrated on a regular and sustained basis, this could be an unconscious cry for help and a sign that something is wrong.

For attorneys who feel this way it is important to speak up, whether this is to a colleague, friend, family member, manager or counsellor. Sharing problems will enable attorneys to begin to address any concerns and find a solution. LawCare also has a completely independent, free and confidential helpline which is manned by trained counsellors, many of whom are legal professionals.

Equally, encouraging wider discussion around mental health in the IP sector will help to break down the taboos surrounding mental illness, promote tolerance and understanding, and support people whatever their strengths and weaknesses.

Creating a supportive and inclusive working environment is a priority for IP Inclusive but it is not something which can be achieved without the participation and support of everyone involved, in particular those in management and decision-making roles.

Reducing stress

Once it has been identified that you may be behaving out of character or feeling a physical strain resulting from work, it is time to act.

Self-evaluation is not always easy when in the midst of a stressful situation, and often anxiety or depression is only identified when an individual has reached their emotional limit. However, once it is recognised, there are simple steps and changes that can be made to daily routines which will help to tackle daily mental health worries.

Simply leaving your desk at lunch and enjoying the outdoors can be hugely beneficial, as is going to bed an hour earlier to ensure that you feel better rested ahead of the next day's work.

Identifying stress triggers and preparing for these is also crucial to taking control of how to manage your own mental health. If the trigger is a situation that is unavoidable in a professional capacity, discuss how to handle this with a manager.

Eating well is also universally recognised as having not only physical health benefits, but also boosting mental stability, so it is also advisable to adjust your diet to incorporate healthier choices during the working day.

Finally, invest in your relationships, whether this is with family and friends or work colleagues; everyone is there to support you, so ensure you make time to relax and unwind with others.

Asking for help

Recognising that you are unable to mentally cope with daily challenges which may be overwhelming is vital. Many attorneys may be tempted to push through these feelings, which could exacerbate the issue.

As such, it is crucial that attorneys speak to a manager at the earliest opportunity before being consumed by stress or anxiety. Burying concerns could result in physical symptoms, such as sleeplessness, fatigue or upset.

In a bid to encourage greater discussion around mental health and create a supportive environment, employers could create a safe space within the office to enable staff to approach them in a confidential setting, according to Dr Jayne Nation at Wynne-Jones IP.

The leading IP firm, which has bases in Cardiff, Cheltenham, Telford and London, actively promotes inclusivity and discussion around mental health across its offices.

"At Wynne-Jones IP we are proud to be a signee of the IP Inclusive charter and to live up to the standards promoted through the initiative", Dr Nation enthuses.

"Our attorneys and their wellbeing are our number one priority and as such we are always on hand to support them in finding a healthy working balance.

"We operate an open-door policy and actively encourage them to approach a team member or manager if they are feeling overwhelmed or struggling with mental health issues.

"Encouraging inclusivity is absolutely crucial when it comes to promoting greater wellbeing across the intellectual property industry and is something we as a firm are passionate about."

This inclusive and supportive ethos is worthy of recognition in an environment where many are reluctant to talk about mental health problems, or even admit that they are suffering from stress or anxiety.

There could be any number of reasons for this, including not wanting to lose face or damage promotion prospects; perhaps feeling undeserving of being unwell when there are others worse off.

However, it is important that the industry finds a way of opening up those conversations, because if people cannot talk about mental health they will battle on alone, which is not good for businesses, clients or for the profession as a whole.

Comment

When it comes to mental health it is essential that people continue to speak out, whether to ask for help or continue to raise awareness across the IP profession.

The IP industry is undoubtedly becoming more inclusive and supportive in relation to mental health, with more people discussing mental health disorders and stress-related issues in a more transparent manner.

To encourage discussion, IP Inclusive has worked with the CIPA and LawCare to create a series of webinars offering support for coping with work-related stress, which educates and supports IP professionals.

This year and last, IP Inclusive ran events to mark Mental Health Awareness Week which was co-organised with supporting organisations such as Wynne-Jones IP. These events focused on tackling workplace stress and addressing the stigma surrounding mental health.

While this is an undeniable step forward, we must continue working to raise awareness of mental health in the IP profession to provide attorneys with the confidence and support they need to recognise the signs, ask for help and make a significant change.

Andrea Brewster OBE

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