

...Continued from page 3

In practical terms, we recommend all patent applicants file a request for examination before the commencement date to gain the benefit of the current standards.

What does this mean for patent system users?

We expect the new laws, if passed in their current form, will mean patent attorneys will have to work even harder for their clients in arguing that inventions involve an inventive step over the prior art. But we expect the standard to be similar to that in the US; in that case, the bar has not been raised beyond reach.



Robert Miller

Principal

robert.miller@sprusons.com.au

IP Australia Backlog Statistics

IP Australia (incorporating the Patent, Trade Marks and Designs offices) is continuing to work on reducing the backlog of patent applications by moving forward with the comprehensive program they introduced in 2008 to address the issues. As outlined in the Department of Innovation, Industry, Science and Research Annual Report 2009-2010, IP Australia is continuing to work *"to improve the timeliness of patent examination and modernise its ICT systems to enhance its capacity to handle interactions with customers in efficient ways."*

One way in which it aims to improve timeliness is by increasing the number of Australian patent examiners. This increase in examiners is to be funded by the increase to patent fees, introduced in August 2010. As explained in the Annual Report the *"revenue generated through these modest increases, the first general fee increases from IP Australia since 2007, will assist with funding the increased numbers of patent examiners, enabling continued progress in addressing the backlog and service time frames."*

The report acknowledges the current average time between requesting an examination and the examination itself is 14 months. IP Australia aims to reduce this in the "long term" to nine months. According to the patent data published by IP Australia, 42% of standard patent applications are now examined and issued with reports within 14 months of receiving exam request, up from 30 % in 2009. Further, in accordance with the Charter Standards, 72% of international search reports are issued for patents within nine weeks of receiving the request.

Only time will tell whether the program will make strides in reducing the backlog.

In a surprising result, a majority of the Full Federal Court of Australia has upheld an appeal by the Bodum Group in a long running dispute about a "copy" CHAMBORD coffee plunger.

In the first instance and on appeal, Bodum submitted that it had a reputation or secondary meaning in the design of its CHAMBORD coffee plunger among a significant number of people in Australia and that DKSH, the company responsible for importing a coffee plunger called EUROLINE with very similar features to the CHAMBORD coffee plunger, misled consumers by selling products whose features signify that they were made or licensed by Bodum, part of the Bodum range or otherwise associated with Bodum.

The trial judge rejected this proposition finding that Bodum's reputation didn't lie in the features of the Bodum products per se but were "distinctly tied to its products being properly labelled and sold in conjunction with reinforced packaging and, significantly, by reference to the Bodum name. He noted that the evidence indicated that "Bodum understood the need to (and did) educate the relevant market to be aware of copyists, and to look for the 'original'". The trial judge endorsed the general principle laid down in the High Court case of *Parkdale v Puzo* that "If an article is properly labelled so as to show the name of the manufacturer or the source of the article, its close resemblance to another article will not mislead an ordinary reasonable member of the public. This long held principle of the High Court has been adopted in many other cases.

Interestingly, in light of the orthodox way in which the trial judge approached the case, a majority of the Full Federal Court came to a different view on the facts by primarily focusing on evidence rejected by the trial judge concerning the way in which the product is at times offered for sale outside of its box.

The primary judge found that the absence of the Bodum name and logo in connection