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Mark J. Davison, Ann L. Monotti and Leanne Wiseman

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Australian Intellectual Property Law

Third edition

Intellectual property law in Australia is a constantly changing field. Developments in technology, such as in the life sciences and in the digitisation of the creation, analysis, distribution and use of information, along with economic globalisation, are having an increasingly significant impact on this field of law.

The third edition of *Australian Intellectual Property Law* has been updated to cover the most important recent developments in intellectual property law, including:

- the 'Raising the Bar' amendments to the *Patents Act 1952* (Cth) and case law concerning the meaning of 'manner of manufacture'
- proposed reforms to the *Copyright Act 1968* (Cth)
- the High Court's consideration of trade marks in various contexts
- recent statutory changes and court judgments.

Through its comprehensive discussion of the black-letter aspects of the law, and primary emphasis on legal principles and complexities, *Australian Intellectual Property Law* continues to offer a detailed and scholarly insight into Australian intellectual property law for students and professionals.

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*For Rachel, Lyllie, Leif, Sara and Oliver
For Alan, Louise, Tim and Henry
For Brad and Lucy*

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Preface

As with the previous two editions of this book, this edition attempts to provide a detailed and scholarly insight into Australian intellectual property law. Its primary emphasis is on the principles of and complexities in that law. The authors have made a deliberate decision to focus on these issues to the exclusion of the wider policy issues surrounding intellectual property law. They have done so for a number of reasons. The first of these is that space constraints make it impractical to adequately deal with those policy considerations in a meaningful way. Consequently, they are flagged throughout the book and detailed references made to the many excellent works that already discuss those matters and to the numerous reviews of intellectual property that have been undertaken. The second and related reason is that an adequate investigation into and analytic examination of the legal principles and complexities of Australian intellectual property law require the sort of detailed treatment that has been undertaken and, again, space constraints demanded a choice about which issues to focus on. The intention is, therefore, to provide an in-depth and scholarly analysis of intellectual property law. By so doing, we aim to increase the stock of knowledge in this important area of the law.

It is no surprise that in the time that has elapsed since the second edition, the law has continued to not only expand but develop in ways both expected, such as the *Raising the Bar* patent law amendments that were discussed in prospect in the second edition, and unexpected. The consequence is the need for a new edition that takes account of that expansion and development. In the area of patents, the key developments in the *Raising the Bar* amendments that were extensively flagged in prospect in the second edition have now become law. There have been a number of important cases decided on a wide range of issues, including the inevitable question of what constitutes a manner of manufacture for patenting purposes in the context of increasingly sophisticated advances in digital technology and the life sciences as well as the issue of methods of medical treatment. In the areas of copyright and designs, some of the recent case law developments on copyright in photographs, moral rights and designs infringement are discussed, as are the Australian Law Reform Commission's report on copyright in the digital economy and the Advisory Council of Intellectual Property's review of the designs legislation.

In trade mark law, there have been a number of complex cases on parallel importing and the general concept of use of a trade mark in the context of

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importation of goods that have been considered by the High Court and the Full Federal Court, while the law of misleading or deceptive conduct has been considered by the High Court in the context of keyword advertising. This new edition integrates these and many other developments into the structure and relevant content of the second edition. The law as covered by the third edition is current to 15 May 2015.

The authors have been responsible for authoring the following chapters:

Mark Davison

Chapters 1–4 and 17

Ann Monotti

Chapters 11–16

Leanne Wiseman

Chapters 5–10

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