

Chapter 19

Intellectual Property Rights and Commercialisation of Research in Higher Education

Mary Wyburn

I Introduction

This chapter is about the ownership of intellectual property when research in Higher Education Institutions (HEIs) is commercialised. It looks at the nature of the key intellectual property rights relevant for commercialised HEI research and the legal principles applied in determining the ownership of the intellectual property generated. The chapter then briefly examines a legal dispute over commercially valuable research outputs in order to illustrate the types of problems that can arise in this context.

II Intellectual Property in HEI Research

There are a number of different categories of intellectual property rights. The chapter will concentrate on those categories most relevant for the commercialisation of HEI research in Australia, ie patent, confidential information and copyright.¹ Other relevant categories include designs, circuit layouts and plant breeder's rights and these are discussed briefly.² Both the nature of these intellectual property rights and the rules about their ownership, have a significant impact on the conduct of research within HEIs.

A *Nature of Intellectual Property in HEI Research*

1 Patent

Patent protects the way a technology works or how it is made. Under patent law exclusive rights are granted to the owner of a patent registered with the Patent Office. The criteria

¹ Protection for intellectual property is afforded at the national level. Often intellectual property protection is also sought in overseas jurisdictions and there are several international treaties and administrative arrangements that facilitate this, for example for patents, the Patent Cooperation Treaty.

² For further information see A Stewart, P Griffith, J Bannister and A Liberman, *Intellectual Property in Australia* (5th ed, LexisNexis Butterworths, 2014), chs 9, 10 and 15. Also included in the categories of intellectual property are various types of trade marks and trade names, for example registered trade marks and business reputation (which covers the tort of passing off and misleading or deceptive conduct or false representations prohibited under the Australian Consumer Law), domain name registration and geographical indications.

This is a preview. Not all pages are shown.