

# LEGAL ISSUES IN OWNERSHIP OF MEDICAL RESEARCH

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*“With the advent of the information revolution — or the third industrial revolution [call it what you will] — skills and knowledge have become the only source of sustainable long-term competitive advantage. Intellectual property lies at the center of the modern company’s economic success or failure. ... For more than a century, the world’s wealthiest human being has been associated with oil — starting with John D Rockefeller in the late nineteenth century and ending with the Sultan of Brunei in the late twentieth century. But today, for the first time in history, the world’s wealthiest person is a knowledge worker. In addition, the world’s major growth industries — such as microelectronics, biotechnology, designer-made materials and telecommunications — are brainpower industries”<sup>1</sup>*

## **Introduction**

In the global economy of the 21st century, innovation drives economic growth and development. Innovation involves the transformation of ideas and knowledge into economic activity in the form of products, processes, services and businesses. It is fundamental to the competitiveness of countries and companies in the modern era.<sup>2</sup>

In this paper I address the Conference, in relation to a very topical Australian case involving the University of Western Australia (UWA) and ownership of a valuable patent which teaches the use of microsphere technology in the treatment of liver cancer.<sup>3</sup>

A short summary of the 380 page decision of the French J (as he then was),<sup>4</sup> and the appeal court which recently upheld the primary judge’s decision is contained in this paper.

I considered that there may be utility in providing the delegates with a short overview of the relevant intellectual property rights in Australia, which will assist put the UWA case in context.

## **The relevant rights**

In Australia and in many jurisdictions around the world, Intellectual Property rights (IP rights), are a bundle of rights, predominantly granted pursuant to a statutory regime and entitling their owners and permitted users to have the exclusive right for a term to exploit the subject matter of the grant.

The inherent intangible nature of IP rights may often give rise to problems. It may be in relation to ownership, where the concepts and ideas may have been sown or harvested during the course of a specific relationship, for example an employee and employer relationship, as in the UWA case.

Similarly, another problematic area, are the boundaries of the IP right. Trade marks are used to distinguish products and services of one trader from another. The extent to which the trade marks or the appearance or 'get up' of the product can protect a trader is a boundary which is often tested. For example, the following trade mark and copyright cases:

*Raging Bull v Live Wire*



*Elwood v Cotton On*





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### *Maltesers v Malt Balls*



In these cases, Red Bull and Elwood succeeded in proving infringement, Maltesers did not.

## **Ownership**

As a general principle, ownership resides in the first instance with the creator. In copyright parlance it is the author, in patent language it is the inventor and in design terminology it is the designer.

A change in ownership may occur due to an assignment or transfer of those rights and a reflection of that transfer will be made by endorsement on the relevant register for patents, trade marks or designs kept by IP Australia. Unlike the U.S., Australia (like Greece), does not have a system of registration of copyrights. Copyrights occur as the literary or artistic work is actually created.

Another manner in which ownership moves away from the inventor/designer/author exists when a person is in a relationship in which the intellectual property rights are created (copyright and obligations of confidence) or lead to their creation (letters patent and registered designs), pursuant to the terms of a contract of employment.<sup>5</sup> An employed graphic designer will produce artistic works, even compilations of artistic and literal content in the course of their employment. Subject to any contrary agreement between the parties, the copyright will vest in the employer.

The employer's entitlement to ownership under these provisions is always subject to any agreement between the employer and employee, to the contrary. For example, one might be invited to a position of employment having a body of research behind them in an area of interest, which is similar to their new position. It may be that is the very reason they are employed. It may not.

At that point, prior to the assumption of the position, it might be appropriate, to disclose one's interest and their research, in order to avoid misunderstandings as to the entitlement to the concept and the body of research accumulated. Of course, this is a sensitive area.<sup>6</sup>

## **Difficulties**

The cases reveal that things are not always so clear. Someone within an organisation may see a need.<sup>7</sup> That person may even have certain adaptable skills beyond the scope of their duties in the position.<sup>8</sup> Researchers may have several positions,<sup>9</sup> or they may or may not have a clear duty to invent.<sup>10</sup>

## **Cases**

The following cases reflect in my view, the development of the law in this area. From an invention by a person not employed to do any product development work and not using the employer's facilities, to a case where the employer's facilities were used and the question of the scope of their duties is much more subtle.

Case 1 (*Electrolux Ltd v Hudson* [1977] FSR 312)

Mr Hudson was employed as a senior storekeeper by Electrolux and was not expected to make inventions which could be of commercial benefit to his employer. Mr Hudson and his wife devised an adaptor for use in vacuum cleaners which made it possible for any open mouthed bag to be used to catch dust.

They applied for a patent for their invention which they later assigned to a third party. Electrolux claimed that all of its employees were subject to its standard conditions of employment and that pursuant to those terms it was entitled to the invention made by Mr and Mrs Hudson.

Whitford J dismissed the claims based on the special terms and conditions but it was submitted on behalf of Electrolux in the alternative, that Mr Hudson owed a fiduciary obligation to Electrolux, i.e. to put the interests of Electrolux before his own, which he had breached.

His Honour accepted that Mr Hudson owed such an obligation but found that he had not breached it, on the basis that Mr Hudson was a storeman; the invention was made in Mr Hudson's home and he made no use of the facilities and materials of Electrolux.

Case 2: *Spencer Industries Pty Ltd v Collins* (2003) 58 IPR 425 at [77]-[86]

In the second case, the decision of the primary judge in the UWA case, referred to this case, with respect to the scope of the employment.

The employee (Mr Collins) was employed as a sales manager by his employer, the applicant (Spencer Industries). Mr Collins had developed an invention, a rasp, which was an assembly for removing the tread from worn tyres.

Mr Collins though could not at first get the interest of his employer in the invention. Subsequently however, the effective controller of Spencer Industries asked Mr Collins to prepare further drawings. A patent attorney's advice was sought on whether the invention was patentable, and Mr Collins was described to the patent attorney as the inventor. On behalf of Spencer Industries the patent attorney lodged petty patent application naming Spencer Industries as the applicant and Mr Collins as the actual inventor.

Mr Collins had not however, assigned the invention to Spencer Industries. Despite this, the patent attorney lodged a notice of entitlement asserting that Spencer Industries had entitlement "on the basis of an Assignment".<sup>11</sup> The petty patent was sealed in the name of Spencer Industries.

Mr Collins and another company interested in the invention, challenged the validity of the petty patent based on entitlement. They asserted that the patent was invalid on the ground that Spencer Industries was not entitled to be granted the patent. The Commissioner of Patents decided that Mr Collins made the invention outside the course of his normal duties as an employee of Spencer Industries and accordingly it did not belong to the employer. Spencer Industries appealed.

Branson J determined that the invention was not made by Mr Collins within the course and scope of his employment as sales manager of Spencer Industries. Mr Collins held a sales position. It was observed that Spencer could give him reasonable directions to perform duties outside of the area of sales that were within the area of his technical skills, which were consistent with his employment position as sales manager.

The development of the rasp was something which fell within this area and was consistent with his skills and his employment and could be the subject of his employer's directions. It was held however that the development of the rasp was not pursuant to the direction, and in fact Mr Collins had been reminded that his focus was to be on sales.

Case 3: *Pancreas Technologies Pty Ltd v The State of Queensland* [2005] APO 1

In this case, an oncologist had been exclusively employed in the oncology clinic of a major hospital. Subsequently, pursuant to a policy of the hospital to encourage 'specialist staff to pursue training in research' in specific areas, the employee, Dr Kelly, sought and obtained a research grant from a fund within the hospital, for the purpose of conducting research "in the field of clinical or experimental oncology, radiobiology, cancer epidemiology".

A salary was given to Dr Kelly who worked part time in the oncology clinic and part on the research project. In addition, laboratory and travelling expenses were included, as were the costs of an assistant. The research project which Dr Kelly extended to a doctorate thesis, led to the filing of a patent application in respect of a claimed cure for a form of pancreatic cancer based on the treatment of pancreatic disease through administration of cyanohydroxybutene, a product found in cruciferous vegetables, raw canola and many stock feeds. The application was assigned to a third party venturer and the State government, acting through the Department of Health, objected to the granting of the patent, arguing that the patent should proceed in its name.

Dr Kelly argued that she had on a number of occasions sought the department's assistance and direction as to the filing of a patent, but no meaningful response had been received.

The delegate of the Commissioner found 'that an inventive contribution was made by Dr Kelly in the course of her employment as a Research Fellow but later development of the invention, although supported by her employer, was not in the course of her normal employment as a part time clinical oncologist'.

Case 4: *University of Western Australia v Gray (No 20)* [2008] FCA 498 (French J, 17 April 2008); *University of Western Australia v Gray* [2009] FCAFC 116 (Lindgren, Finn and Bennett JJ, 3 September 2009) (Full Court appeal)

In 1985 the University of Western Australia (UWA) appointed Dr Bruce Gray as its Professor of Surgery and Head of Department, as a fulltime employee and remained as such until March 1997 when he changed to a part time employment position, whilst concentrating on clinical work at the Royal Perth Hospital.

At the time of his appointment Dr Gray had been engaged for some years in researching the treatment of liver cancer by using microspheres. These were injected into the blood vessels of the liver to deliver anti-cancer therapies to the sites of tumours. Microspheres were directed to those sites with the aid of a vasoactive agent which temporarily promoted blood flow into the tumour blood vessels at the expense of blood flow into normal liver tissue. Dr Gray pursued this research at UWA along with other researchers, including Dr Mark Burton, who had worked with him previously at Melbourne University.

In the years that followed Dr Gray's appointment work was done on three microsphere technologies:

- The first form Selective Internal Radiation, was designed to transport a short lived radioisotope to irradiate cancerous tissue;
- Secondly, DOX-Spheres, was designed to transport and release, in a controlled way, anti-cancer drugs and particularly doxorubicin;
- Thirdly, Thermo-Spheres, involved the delivery of microspheres of magnetic material into the cancerous tissue and heating them by the external application of an alternating or rotating magnetic field. It relied upon a phenomenon known as 'magnetic hysteresis'.

Provisional applications for various patents and international applications under the *Patent Co-operation Treaty* were made in respect of inventions said to have been developed in relation to the various technologies.

Dr Gray was a director of Sirtex Medical Limited (Sirtex), a publicly listed company which was floated in 2000 to commercialise and market the technologies. In 1997 Dr Gray and the Cancer Research Institute (CRI), a body set up to provide support for his research work, had assigned to Sirtex the intellectual property rights arising out of the inventions.

By about 1999 UWA, was aware of his involvement with an external company and the prospect of commercialisation of the technologies and there was a view by 1999 amongst some UWA officers, that UWA might have some claim on the intellectual property rights being used by the company.

The Vice-Chancellor of UWA wrote to Dr Gray in 1999 expressing the sentiment that UWA had an interest in the patented technology. Dr Gray did not disclose the letter to Sirtex.

However by 2000, UWA although aware of the Sirtex's float, prospectus and that it acquired intellectual property rights in respect of the targeted microsphere technologies which it proposed to commercialise, the Vice Chancellor decided that any investigation into whether UWA had an interest in the intellectual property would be difficult because of its 'messy lineage'. In fact, the Vice Chancellor wished Dr Gray well and that if the project became successful, that Dr Gray might donate a Chair of Surgery to UWA. He concluded that the risks of legal action were not outweighed by the likely benefits.

UWA commenced proceedings against Dr. Gray and two companies with which he was associated claiming an interest in certain technologies UWA claimed were developed by Dr Gray, while he was employed by the university.

UWA alleged that Dr Gray had breached his contract of employment with it by failing to comply with disclosure and associated obligations imposed by its Patents Regulations which had been made in 1971 and their successors, the Intellectual Property Regulations (the IP Regulations) which were passed by the Senate of UWA.

French J found that UWA had a problem in seeking to rely upon its Patents Regulations because it was found that from 1988 UWA had effectively abandoned the Patents Committee which the Regulations provided for.<sup>12</sup> In addition, it was found that the Patents Regulations had not been promulgated, as required by the *University of Western Australia Act 1911* (WA) (UWA Act) at a relevant time. His Honour proceeded on the basis that they did not come into effect before that date. The effect of an IP policy which was in disarray was summarised as follows:

In my opinion UWA should be taken to have decided, after 1988, not to appoint a Patents Committee at all. The possibility that a committee could be appointed on an ad hoc basis to respond to reports of particular inventions was never considered. Indeed, UWA moved down an alternative pathway using Uniscan and CABR, the Deputy Vice-Chancellor (Research) and later the Pro Vice-Chancellor (Research) to provide a framework within which inventions could be commercialised. UWA depended upon approaches by staff interested in commercialisation. The activities of these entities were not posited on a legal obligation on staff members to bring matters to them.<sup>13</sup>

#### *Implied term in Dr Gray's contract?*

UWA's main argument hinged on the submission that it was an implied term of Dr Gray's contract of employment that intellectual property developed in the course of his employment belonged to UWA. His Honour relevantly said:<sup>14</sup>

*UWA's case against Dr Gray and Sirtex was critically dependent upon the proposition that it was an implied term of Dr Gray's contract of employment that intellectual property developed in the course of his employment belonged to UWA. Although there seems to have been an assumption among some at UWA that such an implied term operates generally in the case of academic staff who research and use university facilities, I have concluded that the assumption is not well founded. Absent express agreement to the contrary, rights in relation to inventions made by academic staff in the course of research and whether or not they are using university resources, will ordinarily belong to the academic staff as the inventors under the 1990 Act. The position is different if staff have a contractual duty to try to produce inventions. But a duty to research does not carry with it a duty to invent.*

In short, his Honour determined that in the absence of an express provision that Dr Gray's duties involved inventing, the employer UWA could not import such a provision as an implied term of the agreement. Implied terms are those that may not be expressly stated, but are so obvious that their statement is deemed not necessary.

His Honour considered that the only secure way for UWA to acquire property rights from its academic staff in respect of intellectual property developed by them in the course of research at UWA was by express provision in their contracts of employment.<sup>15</sup>

### *Appeal*

On 3 September 2009, the full court delivered its judgment dismissing UWA's appeal thereby upholding the decision at first instance. The full court considered relevant at [36], the funding obtained by Dr Gray, some of which was successful some unsuccessful:

Dr Burton gave evidence of funding allocated to Dr Gray's group from a number of sources. He exhibited to his affidavit a list of research grants for the period July 1985 to 1988. Two were UWA grants, six were from RPH,<sup>16</sup> two from the RPH Research Foundation, one from the CSIRO/UWA Collaborative Research Fund, three from the National Health and Medical Research Council, one from the Cancer Foundation of Western Australia and one from the Medical Research Fund of Western Australia. All related to topics forming part of the targeted microsphere project being undertaken by the group. An analysis of the successful research grant applications for the period 1985 to 1986, taken from Dr Gray's closing submissions and incorporating amendments and comments from UWA, appeared in a Schedule B lodged by UWA in its closing submissions. There were some disputed entries but the points of difference are not of great materiality in the outcome of these proceedings. An extract of some of the elements of Schedule B is Annexure 2 to these reasons.

Aware of the activities of commercialisation by Dr Gray the UWA preferred not to disturb the Sirtex float, not pursue its rights to the IP because it was messy.<sup>17</sup>

The full court also affirmed the primary judge's interpretation of the IP Regulations of the UWA. These regulations, the full court considered were a distraction,<sup>18</sup> and agreed that they attempted to assert ownership over property the UWA did not own. In addition, the court noted the primary judge's finding that they were not even promulgated until 1997, by which time Dr Gray had assigned his rights to Sirtex and was not by March 1997 employed by UWA to do research or invent:

His Honour found that the IP Regulations were not shown to have been promulgated as required by the UWA Act before 30 November 1997, and proceeded on the basis that they did not come into effect until that date. That was after the assignments by Dr Gray to Sirtex....The IP Regulations asserted ownership by UWA of all intellectual property developed by its staff (apart from most copyright). His Honour held (at [13]) that such provisions of the IP Regulations as purported to vest intellectual property rights in UWA or to interfere with the intellectual property generated by its academic staff were beyond UWA's

regulation making power and invalid. Moreover, as noted at [51] above, the IP Regulations did not come into effect until 30 November 1997.<sup>19</sup>

The fundamental complaint, the full court considered related to the question of whether it was an implied term of Dr Gray's contract that he had a duty to invent.<sup>20</sup> The full court made a comment of practical relevance to high level medical researchers. In essence, a level of autonomy in a research position might tend to blur the question of whether such a duty exists:

*We note in passing that it can, on occasion, be factually difficult to define the subject matter over which a particular employee's inventive responsibility to the employer extends. This may be, for example, because (a) the employee's engagement gives him or her considerable discretion in determining the area of inventive inquiry he or she will pursue for the employer's benefit; or (b) the employee's managerial and inventive responsibilities combined are such that he or she, as a fiduciary, is obliged to give the employer the benefit of any invention developed in the course of his or her employment that is germane to the employer's business...which is probably better explained as a breach of fiduciary duty case; or (c) the employee's inventive responsibilities evolve over the course of the employment as a result, for example, of the employment tasks changing.*

The court pointed out to illustrate the care that needs to be taken in determining what a person is employed to do, Jacob LJ in the *LIFFE* case helpfully indicated (at [97]) that this may not be revealed by looking at an employee's day-to-day work:

*Take for instance a research chemist working on a cancer cure for the last ten years. Suppose he came up with a cure for arthritis. He could not seriously contend that he owned the invention because he was day-to-day working on a cancer cure. His duty as a research chemist is clearly wider than his day-to-day work.*

What needs to be said about the definitional problem which can exist in defining the subject matter encompassed by the implied term is that it differs little, if at all, from the parallel problem in fiduciary law of defining "the subject matter over which the fiduciary obligations extend" (see *Birtchnell v Equity Trustees, Executors & Agency Co Ltd* (1929) 42 CLR 384, at 408) for the purposes of the conflict of duty and interest rule.

Finally, because the implied term turns critically on what the employee has been engaged to do, it did not seem to the court to be decisive that the employer is publicly or privately owned.

The full court accepted that the principle behind the implied term, was that an employer is entitled to any product of the work which the employee is employed to do.<sup>21</sup> This was something, UWA ultimately had accepted during the full court hearing:

*Although UWA changed its stance on the implied term during the hearing before us, it finally accepted (Transcript 159) that it was required to establish that Dr Gray's employment contract was one of the class or type in which the employee invention term would be implied.*

Once this was accepted, UWA put its case for an implied term on the following bases that:

- there was no relevant distinction between a university as an employer and any other employer; and
- Dr Gray's contractual duty to undertake research was, in the circumstances, sufficient to bring it within the class of contract attracting the implied term.

The full court rejected both submissions on the bases that there was distinctiveness of UWA as a university, because it was a special purpose statutory corporation created for public services as a 'university'. Secondly, there is distinctiveness of academic employment at university caused by the peculiar joint role that staff at UWA had, namely as members (presumably of the corporation) and as employees. Their employment was different, as there was an element of autonomy when to publish, where to publish and what to research; these things did not sit well with the constraining principles of whether certain work was implied to be included in the employment:

*There is the distinctiveness of academic employment in a university. The two faceted character of an academic staff member's relationship with a university – ie as member and as employee – is "not without significance" as French J observed ([1361]). It probably is the case – though it is not a matter we need explore – that some of the practices revealed in the evidence in this matter (not repudiated by UWA), and the underlying values which seem to inform them, are more likely to be referable to understandings that have been traditionally associated with membership. The seeming freedom to choose the subject or line of research and the manner of its pursuit and the freedom to decide when and how to publish the products of one's research to the extent that these subsist, sit uneasily with employment notions such as the implied duty of an employee to obey all lawful and reasonable instructions of the employer within the scope of the employee's employment, or to maintain the secrecy of confidential information generated in the course of employment. Yet they are apparent manifestations of the contested value of "academic freedom": Cornish, "Rights in University Innovations", at 2-3.<sup>22</sup>*

A question arises as to the treatment of the implied terms of an employee's duties where the university is not a special purpose statutory corporation.

It was certainly accepted that this background did not make UWA immune from influences driving universities a practical commercial approach:

*We accept that UWA has not been immune from the forces, financial and otherwise, that are forcing changes in the character of the university sector in*

*Australia. As French J noted, UWA has engaged in commercial activities, as have done "most, if not all, universities". The evidence put on by UWA as to the range, character and significance of such activities of UWA was slight, though it hoped on the appeal that we would take judicial notice of these matters: cf Evidence Act, s 144(1) (Cth). What is notable for present purposes is that there is nothing in the evidence to suggest that those commercial activities have displaced, either totally or if in part to what extent, UWA's traditional public function as an institution of higher education in favour of the pursuit of commercial purposes (if it lawfully could do so under its Act). Its function, in other words, was not limited to that of engaging academic staff for its own commercial purposes. Accordingly, we agree with French J that on the evidence Dr Gray was not required to advance a commercial purpose of UWA when selecting the research he would undertake.<sup>23</sup>*

Given the UWA was a 'special' university and Dr Gray a 'special' employee, the tool of an implied term was found to be a particularly 'blunt' instrument.<sup>24</sup>

## **Comment**

The case raises a number of issues for the future. Universities, government instrumentalities and even the private sector should consider the terms of employment, particularly as to key personnel, and stipulate in express terms what the scope of their work entails. Subject to any agreement to the contrary, the intellectual property shall belong to the employer if it is made, created, within the scope of that employment.

Secondly, intellectual property regulations or even employment policy guidelines should be incorporated into the contract in a compliant manner. If the policy makes stipulations regarding intellectual property ownership, it must clearly form part of the employment contract, and will be deficient if the employer has not taken steps to implement matters required by the policy.

Thirdly, legislation regulating the question of ownership in government funded research may be considered of utility. In the United States, the Bayh-Dole Act or University and Small Business Patent Procedures Act deals with intellectual property arising from federal government-funded research. Similarly, in the Philippines, the *Technology Transfer Bill*, seeks to secure a return for investment to the government through investment in research collaborations, with a view to a potential return on investment.<sup>25</sup>

The result at this point, save any successful appeal, is that universities at the very least, are on notice of the need to implement transparent, clear and effective policies and contractual terms as to the creation of intellectual property by their research staff.

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<sup>1</sup> Lester C Thurow, “Needed: A New System of Intellectual Property Rights” (1997) 75(3) *Harvard Business Review* 94 at 96.

<sup>2</sup> Anne Fitzgerald and Dimitrios Eliades, *Intellectual Property* (3<sup>rd</sup> ed. 2008) Lawbook Co. Thomson Reuters.

<sup>3</sup> *University of Western Australia v Gray (No 20)* [2008] FCA 498 (French J, 17 April 2008) (the “UWA case”); *University of Western Australia v Gray* [2009] FCAFC 116 (Lindgren, Finn and Bennett JJ, 3 September 2009 (full court appeal).

<sup>4</sup> The Honourable Mr Justice French was appointed Chief Justice of the High Court of Australia on 1 September 2008.

<sup>5</sup> *Copyright Act* 1968 (Cth) s 35(6); *Designs Act* 2003 (Cth) s 13(1)(b). The *Patents Act* 1990 (Cth) does not contain a specific provision dealing with the issue, however the determined cases teach that if the invention is made in the course of one’s employment, that subject to any contrary agreement, the patent shall belong to the employer.

<sup>6</sup> In *Pancreas Technologies Pty Ltd v The State of Queensland acting through Queensland Health* [2005] APO 1 (5 January 2005), an oncologist completed her PhD, with the support of the government department and a research grant, whilst she worked part time in the oncology clinic. No agreement was specifically entered into in relation to the IP rights. The subject matter of her research into pancreatic carcinomas led to a patent, which was the subject of a dispute as to ownership. Like Solomon, the Commissioner divided ownership between the doctor’s company and the State, on the basis that part of the innovation occurred after the research grants ended.

<sup>7</sup> *Electrolux Ltd v Hudson* [1977] FSR 312; In *Victoria University of Technology v Wilson* (2004) 60 IPR 392 at [149] Nettle J (Supreme Court of Victoria) held that a university professor and a senior lecturer, owed to the university fiduciary obligations not to profit from their position at the expense of the university and to avoid conflict of interest and duty. To avoid liability a full disclosure was necessary and consent of the employer.

<sup>8</sup> *Spencer Industries Pty Ltd v Collins* (2003) 58 IPR 425.

<sup>9</sup> *Pancreas Technologies Pty Ltd v The State of Queensland acting through Queensland Health* [2005] APO 1 (5 January 2005).

<sup>10</sup> *University of Western Australia v Gray (No 20)* [2008] FCA 498 (French J, 17 April 2008).

<sup>11</sup> *Patents Act* s 15(1)(c).

<sup>12</sup> Summary of the findings as to UWA’s implementation (or lack of), in relation to IP property policy: [245]ff.

<sup>13</sup> *University of Western Australia v Gray* at [256].

<sup>14</sup> *University of Western Australia v Gray* at [12].

<sup>15</sup> *University of Western Australia v Gray* at [14].

<sup>16</sup> Royal Perth Hospital.

<sup>17</sup> *University of Western Australia v Gray* (full court at [46]).

<sup>18</sup> *University of Western Australia v Gray* (full court at [97]).

<sup>19</sup> *University of Western Australia v Gray* (full court at [51], [54] and [97]).

<sup>20</sup> *University of Western Australia v Gray* (full court at [174]).

<sup>21</sup> *University of Western Australia v Gray* (full court at [180]).

<sup>22</sup> *University of Western Australia v Gray* (full court at [186]).

<sup>23</sup> *University of Western Australia v Gray* (full court at [184]).

<sup>24</sup> *University of Western Australia v Gray* (full court at [207]).

<sup>25</sup> Adopted in 1980, Bayh-Dole is codified in 35 U.S.C. § 200-212.