From the Editors' Desks

This issue is devoted to International Computer Law. We have a range of articles which span the globe, from the Asia-Pacific region, the USA and Europe, and which cover IP concerns from copyright, through semiconductor topographies to patent. David Webber, patent attorney of Davies Collison & Cave Melbourne discusses the changes in the US and Australian laws on software patents. Dr Rao Coca of IBM Asia-Pacific looks at semiconductor chip layout protection throughout Asia, including a section on the Australian *Circuit Layouts Act*. Then John Terry of Baldwin, Son & Carey discusses the patentability of software in New Zealand. Finally, Susan Singleton of Bristows Cooke & Carpmael London examines the implementation in the UK of the EC Directive on Computer Software. Before moving into the issue proper, we should make some comment about the recent *Autodesk* decision.

As we mentioned previously, the High Court heard an application to have the prior decision vacated, and the matter re-heard. This is sufficiently unusual to attract some raised eyebrows, and yet the basis upon which the respondents sought to reopen the case was quite simple. As we reported, the question was whether or not the grounds upon which the court previously made a decision were before the court at the time the decision was made. Unless the appellant Autodesk had put the issue before the court then it was not open for the court to decide on this basis.

The respondents applied for an order vacating the prior judgment on the basis that without fault on their part they had not been heard on three issues:

1. Whether the lookup table is a substantial part of WIDGET.C;

2. Whether the lookup table was indirectly copied by analysing the signals from the AutoCAD lock and WIDGET.C; and

3. Whether copying data in a computer program can constitute a reproduction of a substantial part of that computer program.

The majority of the court comprised Dawson, Brennan and Gaudron JJ. They held, in separate judgments, that the issue upon which the court decided the appeal was put before the court at the time a decision was made. Various reasons were given for this, including that the matter had been raised at first instance or at one of the earlier hearings, and that the applicants had addressed the issue, 'albeit briefly, in their supplementary submissions.' The dissent, given by Mason CJ and Deane J, relied on the holding that there was an injustice in failing to have the issues fully heard, and that the matter should therefore be reopened.

The somewhat confused reasoning of the judges, and the closeness of the decision, show that as far as reverse engineering is concerned, we are not out of the woods. It is impossible to say with any degree of certainty what is the law on reverse engineering in Australia. Moreover, dicta of Mason CJ indicates his concern that perhaps data is not, or should not be, copyrightable. To have spent so much time and money litigating this case, and to be no closer to any sort of answer is, to say the least, disappointing.

The Copyright Law Review Committee has waited until this decision before handing down its suggestions. We can expect to see some recommendations on this topic, which we can only hope will find their way into law. We will keep you updated.

The Editors.