

A Specialist Patent or Intellectual Property Court for New Zealand?

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Specialization in intellectual property law has, in recent years, become an important issue due to the need for an efficient system for the resolution of intellectual property and patent disputes. Specialist courts or panels within existing courts have been developed in many jurisdictions and the question posed in this article is whether New Zealand should follow suit. This article traverses the differing specialist intellectual property (IP) and patent adjudication systems in the United States, United Kingdom, Australia and Japan to assess what system would best suit New Zealand. The benefits and disadvantages of specialization generally are also discussed. The conclusion is that the time is ripe for some form of specialization in IP matters in New Zealand and that the best model for New Zealand to adopt is one similar to that of the Federal Court of Australia panel system, whereby judges opt into particular panels while still taking on cases within the court's general docket. The article proposes that this specialization in New Zealand should occur in the High Court (trial level) as the real need for specialist knowledge is at the fact-finding stage. It is argued that a panel system would strike the appropriate balance between developing expertise on the bench, allowing for cross-fertilization of legal developments, while also preventing stagnation and idiosyncratic interpretations of the law. Some specialization at intermediate appellate court level is also recommended.

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In 2005, the Intellectual Property and Entertainment Committee (IPEC) of the International Bar Association concluded, after a survey of arrangements in a variety of jurisdictions, that the time was right for the development of specialist intellectual property (IP) courts (IPEC, 2005, paragraph 5). In IPEC's view, a robust, forward-looking and efficient court system with sufficient predictability and consistency is necessary properly to protect IP rights. Practitioners and commentators globally saw the general courts as failing to achieve these aims (IPEC, 2005, paragraph 2.2). Further, while a trend of specialization had occurred in the legal profession regarding IP law, there had, in most jurisdictions, been no corresponding specialization of judges (IPEC, 2005, paragraph 2.2). This was seen as a barrier to the operating of an efficient patent and IP enforcement system.

The survey found, however, that the trend worldwide was leaning towards the creation of specialized IP courts or specialized divisions for IP matters within the general courts. Some countries had seen specialist IP courts as the best way to satisfy their obligations under international agreements such as the Agreement on