

OFFICIAL NOTICE

Designs Act 2003

Converting a Design Application

Background:

Upon commencement of the Designs Act 2003, on Thursday 17th June 2004, there will be design applications filed under the Designs Act 1906 which will not have not been finally dealt with under the provisions of that Act, i.e. 'transitional applications'.

Chapter 12, Part 2 of the Designs Act 2003 sets out *Transitional and Saving provisions* in relation to various matters under the 1906 Act. Specifically, sections 159 - 161 of the Designs Act 2003 make provision for an applicant to convert a transitional application to an application under the Designs Act 2003.

'Transitional Applications':

A 'transitional application' is an application that was made under the Designs Act 1906 that has not lapsed and has not been registered or refused under that Act.

Requesting conversion:

An applicant who has made a transitional application may request to convert their application to an application under the Designs Act 2003.

Conversion is not mandatory. (See below - If conversion is not requested)

A decision to request conversion is totally at the discretion of the applicant and should be considered carefully taking into account all facts and circumstances.

A request to convert can be made at any time before the transitional application is registered or before the application is lapsed, withdrawn or refused.

There is no fee for requesting conversion of an application. Note, however, that if a transitional application includes more than one design and the applicant requests to register the designs separately, or it is apparent that there is clearly more than one design to be registered, the Designs Office will issue an Invitation To Pay (ITP) in respect of the excess designs, over and above the first design. The applicant will have two months from the date of the ITP to pay the fee/s or to exclude or withdraw the excess designs. If the excess designs fee/s are paid the designs can be registered separately.

Further information on the issues related to converting an application the Designs Act 2003 can be accessed at the IP Australia website link referred to at the bottom of this notice.

Effect of converting an application:

Under the provisions of section 160 of the Designs Act 2003, a converted design application is taken to:

- be an application under the Designs Act 2003;
- have the filing date of the transitional application;
- have the same priority date as it had under the transitional application;
- meet the minimum filing requirements of the Designs Act 2003;
- include a request to register each design disclosed in the transitional application; &
- have a term of ten years starting from the date of the conversion request.

If conversion is not requested:

If a 'transitional application' is not converted to an application under the Designs Act 2003, it will continue to be examined and dealt with as it would have been under the provisions of the Designs Act 1906.

More information:

For more information on issues relating to the transitional and saving provisions of the Designs Act 2003, including converting a transitional application, please refer to the IP Australia website, ipaustralia.gov.au under the Designs tab by selecting the link Information about the New Designs Act.

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