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Patent Rights and International Exhibitions

This fact sheet provides information on international exhibitions, and the potential impact on receiving patent protection.

Introduction

If you are organising an international technology exhibition, trade fair or similar event (or are planning to exhibit an invention at such an event either in Australia or elsewhere), you need to be aware of the consequences of exhibiting an invention if a patent application on that invention has not been made before the exhibition.

In Australia, and in most countries, where an invention has been made public (including public display at an exhibition) before a patent application has been made, a valid patent cannot be granted for that invention unless the exhibition is one recognised in the *Patents Act*.

For certain 'international exhibitions' there are international conventions, and special provisions in the Australian *Patents Act*, that have the effect of preventing the public display of an invention at that exhibition from invalidating a subsequently filed patent.

The only exhibitions that can obtain this benefit are 'international exhibitions' – that is, exhibitions which admit products and exhibits from other countries. Two categories of international exhibitions are recognised in the *Patents Act*:

- 1. An official or officially recognised international exhibition** (within the meaning of Article 11 of the *Paris Convention for the protection of Industrial Property* or Article 1 of the Convention relating to International Exhibitions done at Paris on 22 November 1928).

The protection afforded to inventors for the display of their inventions at these exhibitions is generally recognised internationally.

Brisbane's World Expo 88 was an example of this category of exhibition, which are organised on a Government-to-Government basis. Only a national Government – in this case, the Federal Government – can apply to the Bureau of International Expositions to stage such an event.

For information on the calendar of exhibitions approved in accordance with the Convention relating to International Exhibitions, you should write to the Australian Intellectual Cultural Council, Department of Foreign Affairs & Trade, RG Casey Building, John McEwen Crescent, Barton ACT 2600.

- 2. An international exhibition recognised by the Commissioner of Patents.**

An international exhibition recognised by the Commissioner generally will not be recognised as an international exhibition



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by other countries.

Anyone can request that an exhibition be recognised, by writing to the Commissioner of Patents, PO Box 200, WODEN ACT 2606.

When the Commissioner recognises an exhibition, a notice is published in the Official Journal of Patents before the beginning of the event.

The Commissioner will only recognise certain types of exhibitions - viz. exhibitions that:

- are held in Australia;
- have an emphasis on innovation;
- are not essentially commercial in nature; and
- are international (as discussed above).

Consequently when making a request you will need to include sufficient information to satisfy the Commissioner of these requirements. With regard to the requirement that the exhibition be international, it may be sufficient to show that foreign exhibitors have been invited, it is not essential that foreign products be actually exhibited.

Additionally, because recognition by the Commissioner will not result in recognition of the exhibition by other countries, the Commissioner will only recognise an exhibition if he or she is satisfied that exhibitors are informed that the recognition given by the Commissioner affords no protection if they intend to make a patent application in a foreign country.

Accordingly, before recognising an exhibition, the Commissioner will require the organisers of the exhibition to:

- to advise all exhibitors in writing, at least

two weeks before the exhibition:

- that while the exhibition has been recognised by the Commissioner of Patents for the purposes of patents in Australia, the exhibition has not been recognised by other countries;
 - any exhibitor contemplating filing a patent application for their invention in another country should ensure that a patent application for the invention is filed, at least in Australia, before their invention is exhibited; and
 - any exhibitor contemplating filing a patent application for their invention should consult a professional adviser, such as a registered patent attorney, before their invention is exhibited.
- to include in any publicity which makes reference to the exhibition being recognised by the Commissioner a statement (of equal prominence) to the effect that the recognition applies in Australia ONLY.

Applying for a patent following an Exhibition

To obtain a patent in Australia and take advantage of the provisions of the Act with respect to exhibitions, the exhibitor must file a patent application in Australia within six months of the first showing or use of the invention at a recognised exhibition.

The patent applicant must also:

- a) at the time of filing the application, file a notice stating that the invention has been exhibited; and
- b) prior to the complete specification in respect of that application becoming open to public inspection, file a statement issued by the authority responsible for the



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exhibition in which:

i) the invention and the exhibition are identified; and

ii) the date of the opening of the exhibition is given; and

iii) where the first disclosure of the invention during the exhibition did not take place on that date the date of that disclosure.

To obtain patents in other countries, a professional adviser such as a registered patent attorney should be consulted, as the requirements relating to exhibitions vary from country to country. Also, as the time for making a patent application in another country based on an Australian application may be affected by the disclosure at the exhibition, professional advice should be sought before disclosing the invention.

Seek Professional Advice

This sheet provides only basic information. Patent matters can involve complex legal issues and it may be in your best interests to consult a patent attorney, solicitor experienced in intellectual property matters, or your business adviser.

For a list of IP professionals, visit the IP Australia website www.ipaustralia.gov.au or search your local Yellow Pages Directory.

Disclaimer:

This information is intended to help the reader gain a basic understanding of some IP principles. It is not designed to provide legal, business or other relevant professional advice. IP Australia recommends that you seek independent legal, business or other relevant specialist advice.

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