

## Costs, Expenses and Allowances

---

As part of the Fee Review 2023-24 process, IP Australia is considering raising the costs that may be awarded in relation to Patents, Trade Marks and Designs proceedings. The current levels have not changed in many years and stakeholders have communicated that these costs are too low in relation to actual costs incurred by the parties involved. The policy setting remains that costs should generally not rise to the level of party/party costs but rather be a portion of the costs incurred.

We invite submissions from interested parties on the proposed changes as outlined below:

### Patents Schedule 8 – Costs, expenses and allowances

#### Part 1 – Costs

Item	Matter	Current Amount	Proposed Amount
1	Notice of opposition	\$200	\$400
2	Statement of grounds and particulars	\$750	\$1,500
3	Receiving and perusing statement of grounds and particulars	\$500	\$1,000
4	Evidence in support	\$1,500	\$3,000
5	Receiving and perusing notice of opposition	\$200	\$400
6	Receiving and perusing evidence in support	\$750	\$1,500
7	Evidence in answer	\$1,500	\$3,000
8	Receiving and perusing evidence in answer	\$750	\$1,500
9	Evidence in reply	\$750	\$1,500
10	Receiving and perusing evidence in reply	\$350	\$700
11	Preparation of case for hearing	\$1,000	\$2,000
12	Attendance at hearing by registered patent attorney or solicitor without counsel	\$260 an hour, but not more than \$1,170 a day	\$390 an hour, but not more than \$1,755 a day
13	Attendance at hearing by registered patent attorney or solicitor instructing counsel	\$200 an hour, but not more than \$900 a day	\$300 an hour, but not more than \$1,350 a day
14	Counsel fees for attendance at a hearing	\$300 an hour, but not more than \$1,350 a day	\$450 an hour, but not more than \$2,025 a day

## Division 1 – Expenses

Current	Proposed
<p>1. A person who has paid a fee prescribed in these Regulations in relation to proceedings before the Commissioner or the Disciplinary Tribunal may be paid the amount of the fee.</p>	<p>1. A person who has paid a fee prescribed in these Regulations in relation to proceedings before the Commissioner or the Disciplinary Tribunal may be paid the amount of the fee.</p>
<p>2. A person attending proceedings before the Commissioner or the Disciplinary Tribunal must be paid:</p> <p>(a) a reasonable amount for allowances for transport between the usual place of residence of the person and the place that he or she attends for that purpose; and</p> <p>(b) if the person is required to be absent overnight from his or her usual place of residence--a reasonable amount for allowances up to a daily maximum of \$700 for meals and accommodation.</p>	<p>2. A person attending proceedings before the Commissioner or the Disciplinary Tribunal must be paid:</p> <p>(a) a reasonable amount for allowances for transport between the usual place of residence of the person and the place that he or she attends for that purpose; and</p> <p>(b) if the person is required to be absent overnight from his or her usual place of residence--a reasonable amount for allowances up to a daily maximum of \$1050 for meals and accommodation.</p>

## Division 2 – Allowances

Current	Proposed
<p>3. A person who, because of his or her professional, scientific or other special skill or knowledge, is summoned to appear before the Commissioner or the Disciplinary Tribunal as a witness must be paid:</p> <p>(a) if the person is remunerated in his or her occupation by wages, salary or fees--an amount equal to the amount of wages, salary or fees not paid to the person because of his or her attendance for that purpose; or</p> <p>(b) in any other case--an amount of not less than \$140, or more than \$700, for each day on which he or she so attends.</p>	<p>3. A person who, because of his or her professional, scientific or other special skill or knowledge, is summoned to appear before the Commissioner or the Disciplinary Tribunal as a witness must be paid:</p> <p>(a) if the person is remunerated in his or her occupation by wages, salary or fees--an amount equal to the amount of wages, salary or fees not paid to the person because of his or her attendance for that purpose; or</p> <p>(b) in any other case--an amount of not less than \$210, or more than \$1050, for each day on which he or she so attends.</p>
<p>4. A person summoned to appear before the Commissioner or the Disciplinary Tribunal as a witness, other than a witness referred to in clause 3, must be paid:</p> <p>(a) if the person is remunerated in his or her occupation by wages, salary or fees--an amount equal to the amount of wages, salary or fees not paid to the person because of his or her attendance for that purpose; or</p> <p>(b) in any other case--an amount of not less than \$80, or more than \$130, for each day on which he or she so attends.</p>	<p>4. A person summoned to appear before the Commissioner or the Disciplinary Tribunal as a witness, other than a witness referred to in clause 3, must be paid:</p> <p>(a) if the person is remunerated in his or her occupation by wages, salary or fees--an amount equal to the amount of wages, salary or fees not paid to the person because of his or her attendance for that purpose; or</p> <p>(b) in any other case--an amount of not less than \$120, or more than \$195, for each day on which he or she so attends.</p>

## Trade Mark Schedule 8—Costs, expenses and allowances

(subregulation 21.13(3))

### Part 1—Costs

Item	Matter	Current Amount	Proposed Amount
1	Notice of intention to oppose	\$200	\$250
2	Statement of grounds and particulars	\$200	\$750
3	Receiving and perusing statement of grounds and particulars	\$130	\$500
4	Notice of intention to defend	\$200	\$500
5	Notice of opposition filed under subregulation 6.6(1), 8.4(1) or 21.20B(1)	\$200	\$600
6	Receiving and perusing a notice of opposition filed under subregulation 6.6(1), 8.4(1) or 21.20B(1)	\$130	\$300
7	Evidence in support	\$700	\$2,000
8	Receiving and perusing evidence in support	\$300	\$1,000
9	Evidence in answer	\$700	\$2,000
10	Receiving and perusing evidence in answer	\$210	\$1,000
11	Evidence in reply	\$350	\$1,000
12	Receiving and perusing evidence in reply	\$130	\$500
13	Preparation of cases for hearing	\$525	\$1,500
14	Attendance at hearing by registered patent attorney, registered trade marks attorney or solicitor without counsel	\$260 an hour, but not more than \$1,170 a day	\$390 an hour, but not more than \$1,755 a day
15	Attendance at hearing by registered patent attorney, registered trade marks attorney or solicitor instructing counsel	\$200 an hour, but not more than \$900 a day	\$300 an hour, but not more than \$1,350 a day
16	Counsel fees for attendance at a hearing	\$300 an hour, but not more than \$1,350 a day	\$450 an hour, but not more than \$2,025 a day

### Division 1—Expenses

Current	Proposed
1. A person who has paid a fee prescribed in these regulations in relation to proceedings before the Registrar may be paid the amount of the fee.	1. A person who has paid a fee prescribed in these regulations in relation to proceedings before the Registrar may be paid the amount of the fee, apart from a fee paid for filing or amending a statement of grounds and particulars.
2. A person attending proceedings before the Registrar must be paid: (a) a reasonable amount for allowances for transport between the usual place of	2. A person attending proceedings before the Registrar must be paid: (a) a reasonable amount for allowances for transport between the usual place of

<p>residence of the person and the place that he or she attends for that purpose; and</p> <p>(b) if the person is required to be absent overnight from his or her usual place of residence—a reasonable amount for allowances up to a daily maximum of \$700 for meals and accommodation.</p>	<p>residence of the person and the place that he or she attends for that purpose; and</p> <p>(b) if the person is required to be absent overnight from his or her usual place of residence—a reasonable amount for allowances up to a daily maximum of \$1,050 for meals and accommodation.</p>
---	---

**Division 2—Allowances**

<b>Current</b>	<b>Proposed</b>
<p>3. A person who, because of his or her professional, scientific or other special skill or knowledge, is summoned to appear as a witness before the Registrar must be paid:</p> <p>(a) if the person is remunerated in his or her occupation by wages, salary or fees—an amount equal to the amount of wages, salary or fees not paid to the person because of his or her attendance for that purpose; and</p> <p>(b) in any other case—an amount of not less than \$140, or more than \$700, for each day on which he or she so attends.</p>	<p>3. A person who, because of his or her professional, scientific or other special skill or knowledge, is summoned to appear as a witness before the Registrar must be paid:</p> <p>(a) if the person is remunerated in his or her occupation by wages, salary or fees—an amount equal to the amount of wages, salary or fees not paid to the person because of his or her attendance for that purpose; and</p> <p>(b) in any other case—an amount of not less than \$210, or more than \$1,050, for each day on which he or she so attends.</p>
<p>4. A person summoned to appear as a witness, other than a witness referred to in clause 3, before the Registrar must be paid:</p> <p>(a) if the person is remunerated in his or her occupation by wages, salary or fees—an amount equal to the amount of wages, salary or fees not paid to the person because of his or her attendance for that purpose; and</p> <p>(b) in any other case—an amount of not less than \$80, or more than \$130, for each day on which he or she so attends.</p>	<p>4. A person summoned to appear as a witness, other than a witness referred to in clause 3, before the Registrar must be paid:</p> <p>(a) if the person is remunerated in his or her occupation by wages, salary or fees—an amount equal to the amount of wages, salary or fees not paid to the person because of his or her attendance for that purpose; and</p> <p>(b) in any other case—an amount of not less than \$120, or more than \$195, for each day on which he or she so attends.</p>

**Designs Schedule 3 - Costs**

(regulation 10.02)

**Part 1—Costs**

Item	Matter	Current Amount	Proposed Amount
1	Preparing notice of opposition	\$200	\$600
2	Receiving and perusing notice of opposition	\$130	\$300
3	Preparation of case for hearing	\$525	\$1500
4	Attendance at hearing by: (a) a registered patent attorney without counsel; or (b) a registered trade marks attorney without counsel; or (c) a solicitor without counsel	\$260 an hour, but not more than \$1,170 a day	\$390 an hour, but not more than \$1,755 a day
5	Attendance at hearing by: (a) a registered patent attorney instructing counsel; or (b) a registered trade marks attorney instructing counsel; or (c) a solicitor instructing counsel	\$200 an hour, but not more than \$900 a day	\$300 an hour, but not more than \$1,350 a day
6	Attendance at hearing by: (a) a registered patent attorney instructing counsel; or (b) a registered trade marks attorney instructing counsel; or (c) a solicitor instructing counsel	\$300 an hour, but not more than \$1,350 a day	\$450 an hour, but not more than \$2,025 a day

**Part 2—Expenses and allowances**

**Division 1—Expenses**

Current	Proposed
<p>1. A person who has paid a fee prescribed in these Regulations in relation to proceedings before the Registrar may be paid the amount of the fee.</p> <p><u>Note:</u> If the person wishes to be paid, the person must apply for an award of costs in respect of the proceedings: see regulation 10.02.</p>	<p>1. A person who has paid a fee prescribed in these Regulations in relation to proceedings before the Registrar may be paid the amount of the fee.</p> <p><u>Note:</u> If the person wishes to be paid, the person must apply for an award of costs in respect of the proceedings: see regulation 10.02.</p>
<p>2. A person attending proceedings before the Registrar must be paid:</p> <p>(a) a reasonable amount for allowances for transport between the person’s usual place of residence and the place where he or she attends the proceedings; and</p> <p>(b) if the person is required to be absent overnight from his or her usual place of residence—a reasonable amount for allowances up to a daily maximum of \$700 for meals and accommodation.</p>	<p>2. A person attending proceedings before the Registrar must be paid:</p> <p>(a) a reasonable amount for allowances for transport between the person’s usual place of residence and the place where he or she attends the proceedings; and</p> <p>(b) if the person is required to be absent overnight from his or her usual place of residence—a reasonable amount for allowances up to a daily maximum of \$1,050 for meals and accommodation.</p>

**Division 2—Allowances**

<b>Current</b>	<b>Proposed</b>
<p>3. A person who, because of his or her professional, scientific or other special skill or knowledge, is summoned to appear as a witness before the Registrar must be paid:</p> <p>(a) if the person is remunerated in his or her occupation by wages, salary or fees—an amount equal to the amount of wages, salary or fees not paid to the person because of his or her attendance as a witness; or</p> <p>(b) in any other case—an amount of not less than \$140, or more than \$700, for each day when he or she so attends.</p>	<p>3. A person who, because of his or her professional, scientific or other special skill or knowledge, is summoned to appear as a witness before the Registrar must be paid:</p> <p>(a) if the person is remunerated in his or her occupation by wages, salary or fees—an amount equal to the amount of wages, salary or fees not paid to the person because of his or her attendance as a witness; or</p> <p>(b) in any other case—an amount of not less than \$210, or more than \$1,050, for each day when he or she so attends.</p>
<p>4. A person summoned to appear as a witness, other than a witness referred to in clause 3, before the Registrar must be paid:</p> <p>(a) if the person is remunerated in his or her occupation by wages, salary or fees—an amount equal to the amount of wages, salary or fees not paid to the person because of his or her attendance as a witness; or</p> <p>(b) in any other case—an amount of not less than \$80, or more than \$130, for each day when he or she so attends.</p>	<p>4. A person summoned to appear as a witness, other than a witness referred to in clause 3, before the Registrar must be paid:</p> <p>(a) if the person is remunerated in his or her occupation by wages, salary or fees—an amount equal to the amount of wages, salary or fees not paid to the person because of his or her attendance as a witness; or</p> <p>(b) in any other case—an amount of not less than \$120, or more than \$195, for each day when he or she so attends.</p>