



## Patents (Formalities Requirements for Patent Documents) Determination 2019

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I, Frances Roden, Commissioner of Patents, make the following determination.

Dated 7/1/19

*Frances Roden*

Frances Roden  
Commissioner of Patents

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## Part 1—Preliminary

### 1 Name

This determination is the *Patents (Formalities Requirements for Patent Documents) Determination 2019*.

### 2 Commencement

- (1) Each provision of this determination specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this determination	At the same time as Parts 6 to 12 of Schedule 2 to the <i>Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Act 2018</i> .  However, the provisions do not commence at all if those parts do not commence.	

Note 1: This table relates only to the provisions of this determination as originally made. It will not be amended to deal with any later amendments of this determination.

Note 2: Parts 6 to 12 of Schedule 2 to the *Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Act 2018* commence at the same time as Parts 2 and 3 of Schedule 1 to that Act: see item 8 of the table in subsection 2(1) of that Act. Parts 2 and 3 of Schedule 1 to that Act commence on 24 February 2019, unless proclaimed to commence earlier: see item 3 of the table in subsection 2(1) of that Act, after that Act received the Royal Assent on 24 August 2018.

- (2) Any information in column 3 of the table is not part of this determination. Information may be inserted in this column, or information in it may be edited, in any published version of this determination.

### 3 Authority

This determination is made under subsection 229(1) of the Act for the purposes of the following:

- (a) paragraphs 29(4A)(d) and (4B)(c) of the Act; and
- (b) subregulations 3.2C(3) and 22.16(2), and paragraph 10.2(1)(a), of the Regulations.

### 4 Definitions

In this determination:

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*Act* means the *Patents Act 1990*.

*Regulations* means the *Patents Regulations 1991*.

*sheet* means either a piece of paper, or an electronic image or representation of a piece of paper.

*usable surface* has the meaning set out in paragraph 9(2)(b) of this determination.

*WIPO* means the World Intellectual Property Organization.

## **Part 2—Formalities requirements for patent documents**

### **5 Terminology and signs**

In a document:

- (a) units of description must be expressed in terms of the metric system or, if first expressed in other terms, must be expressed also in terms of that system; and
- (b) temperatures must be expressed in degrees Celsius or, if first expressed in another manner, must be expressed also in degrees Celsius; and
- (c) to indicate units of measurement, the rules of international practice must be observed; and
- (d) in chemical formulas, the symbols, atomic weights and molecular formulas in general use must be employed; and
- (e) other terms, signs and symbols that are generally accepted in the art to which the document principally relates must be employed; and
- (f) the beginning of any decimal fraction must be marked by a period; and
- (g) units, signs, symbols and other terms must be used consistently.

### **6 Title of specification**

A complete specification must commence with a short and precise title.

### **7 Fitness for reproduction**

- (1) Where a document is filed on paper, each sheet comprising a document or part of a document:
  - (a) must be presented in a manner that allows any number of copies of the sheet to be reproduced directly by means of photography, an electrostatic or photo-offset process and microfilming; and
  - (b) must not be folded, creased or cracked; and
  - (c) subject to subsection 12(4) and subsection 15(16), must be presented in a vertical format; and
  - (d) must be durable, flexible, smooth, strong, white and have a matte finish; and
  - (e) must be international sheet size A4; and
  - (f) must be printed on only one side of the sheet; and

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- (g) must be presented in a manner that allows the sheets to be converted to an electronic form that is legible when the sheets are viewed as the same size as an A4 sheet.
- (2) Where a document is filed in electronic form, any images of drawings, graphics, photographs or formulas must be of sufficient clarity that the images are legible when the sheets are viewed as the same size as an A4 sheet.

## 8 Separate sheets

- (1) The patent request, the description of the invention, the claim or claims, any drawing, graphic or photograph, and an abstract, must each commence on a separate sheet.
- (2) The sheets comprising a document must be connected so that they may be readily:
- (a) turned to be read; and
  - (b) separated for the purposes of reproduction and then re-joined.

## 9 Margins

- (1) Subject to subsection (2), each sheet of a complete specification, or an abstract, must have a margin that is not less than:
- (a) at the top—2 cm; and
  - (b) on the left—2.5 cm; and
  - (c) on the right—2 cm; and
  - (d) at the bottom—2 cm.
- (2) A sheet of drawings, graphics or photographs:
- (a) must have a margin that is not less than:
    - (i) at the top—2.5 cm; and
    - (ii) on the left—2.5 cm; and
    - (iii) on the right—1.5 cm; and
    - (iv) at the bottom—1 cm; and
  - (b) must show the drawings entirely within that margin and within an area of the sheet measuring 26.2 cm × 17.0 cm (the *useable surface*); and
  - (c) must not contain a frame surrounding the drawings or the useable surface.

## 10 Numeration

- (1) A patent request and a complete specification of a complete application must be presented in the following order:
- (a) patent request;
  - (b) description of the invention, other than any sequence listing part of the description;
  - (c) claim or claims;
  - (d) abstract;
  - (e) drawing(s), graphic(s) and photograph(s);

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- (f) sequence listing part of the description, if applicable.
- (2) Subject to subsection (3), the sheets of a complete specification must be numbered consecutively in Arabic numerals beginning with '1' that are placed at the top and in the middle, of the sheet, but not within the margins of the sheet.
  - (3) The sheets of a complete specification that contain drawings, graphics or photographs must be numbered by means of sets of 2 Arabic numerals separated by an oblique stroke, the first numeral in each set being the consecutive number of each sheet, beginning with the Arabic number '1' and the second being the total number of the sheets containing the drawings, graphics or photographs.
  - (4) If there is more than 1 claim referred to in a complete specification, the claims must be numbered consecutively in Arabic numerals beginning with '1'.
  - (5) In a statement of proposed amendments:
    - (a) the proposed amendments must be numbered consecutively; and
    - (b) if the statement is a subsequent one, the numbering must be consecutive with the numbers in the previous statement.

## **11 Writing of textual matter**

- (1) Subject to subsection (2), except with the consent of the Commissioner, a patent request and a complete specification of a complete application, including any abstract, must be typewritten or otherwise machine printed.

Note: A person seeking to file a complete application that it is not typewritten or otherwise machine printed should first request the consent of the Commissioner. In deciding whether to give consent, the Commissioner may consider whether the document can be reproduced satisfactorily.

- (2) If necessary, symbols relating to graphic matter, or chemical or mathematical formulas, may be handwritten or drawn, as the case may be.
- (3) The lines of text in a typewritten document must be 1<sup>1</sup>/<sub>2</sub> spaced.
- (4) The text in a document must be presented in letters the capitals of which are not less than 0.21 cm high, in a dark colour and be indelible.

## **12 Drawings, graphics, photographs, formulas and tables in textual matter**

- (1) A patent request in relation to a complete application must not include a drawing, graphic or photograph.
- (2) The description of an invention or an abstract:
  - (a) must not include a drawing, graphic or photograph; and
  - (b) may include chemical or mathematical formulas or tables.
- (3) A claim:
  - (a) must not include a drawing, graphic or photograph; and
  - (b) may include chemical or mathematical formulas; and
  - (c) may include tables if the subject matter of the claim makes the use of a table desirable.

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- (4) A table or a chemical or mathematical formula may be presented in a horizontal format if it cannot be presented in a vertical format in a satisfactory manner.
  - (5) If a table or a chemical or mathematical formula is presented in a horizontal format, the top of the table or formula must be placed on the left side of the sheet.

### **13 Words in drawings, graphics and photographs**

A drawing, graphic or photograph must not include text, other than a word or words indispensable to the understanding of the drawing, graphic or photograph.

### **14 Alterations**

- (1) A document must be free from erasures, alterations, overwritings and interlineations.
- (2) Strict compliance with subsection (1) is required unless the Commissioner considers that substantial compliance would not:
  - (a) compromise the authenticity; or
  - (b) jeopardise the likelihood of clear reproduction; of the document.

### **15 Special requirements for drawings, graphics and photographs**

- (1) A drawing must be executed in durable, dense, uniformly thick and well-defined, lines and strokes.
- (2) Subject to subsections 12(1) to (3) of this determination, a photograph or graphic may be filed in substitution for a drawing where it is impossible to represent in a drawing what is to be shown.
- (3) The use of colour is only permitted in a drawing, photograph or graphic if the colouring is indispensable to understanding the invention.

Note: If the document is transferred to WIPO or the office of any foreign jurisdiction, the drawing, graphic or photograph may be converted to greyscale or black and white upon receipt by WIPO or the office of any foreign jurisdiction.
- (4) A cross-section must be indicated by oblique hatching that does not impede the clear reading of reference letters, numbers or signs and leading lines.
- (5) The scale of a drawing and the distinctness of its execution must enable all the details to be distinguished without difficulty on a photographic reproduction of the drawing with a two-thirds linear reduction in size.
- (6) If the scale of a drawing is given on the drawing, it must be represented graphically.
- (7) A letter, number or reference line that is shown on a drawing must be presented simply and be clear.
- (8) Brackets, braces, circles or inverted commas must not be used in association with letters or numbers.

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- (9) A line in a drawing must ordinarily be drawn with the aid of drafting instruments.
  - (10) A sheet of drawings may include more than 1 drawing.
  - (11) Each element of a drawing must be shown in proper proportion to each other element of the drawing, other than where the use of a different proportion is indispensable for the clarity of the drawing.
  - (12) The height of a letter or a number in a drawing must not be less than 0.32 cm.
  - (13) For the lettering of a drawing, the Latin or, if customary, the Greek alphabet must be used.
  - (14) If drawings on 2 or more sheets of drawings form in effect a single drawing, the drawings must be so arranged that the single drawing can be assembled without concealing any part of the other drawings.
  - (15) Subject to subsection 15(16), if there is more than 1 drawing on a sheet of drawings, the drawings must be presented on the sheet of drawings in a vertical format and separate from each other.
  - (16) If the drawings on a sheet of drawings cannot be presented in a vertical format, they must be presented in a horizontal format with the tops of the drawings on the left of the sheet of drawings.
  - (17) The drawings must be numbered consecutively in Arabic numerals beginning with '1'.
  - (18) A reference sign that is not mentioned in the description of the invention must not be referred to in a drawing.
  - (19) A reference sign that is not mentioned in a drawing must not be referred to in the description.
  - (20) A feature of a drawing that is denoted by a reference sign must be so denoted consistently.
  - (21) A photograph or graphic must meet the requirements of this section that are applicable to drawings, in so far that they are relevant.

## **16 Amino acid sequences and nucleotide sequences**

Amino acid sequences or nucleotide sequences must meet the formality requirements as set out in Annex C of the Administrative Instructions under the Patent Cooperation Treaty, as in force at the time this determination commenced.

Note: At the time this determination commenced, the Administrative Instructions under the Patent Cooperation Treaty could be accessed on the WIPO website at [www.wipo.int](http://www.wipo.int).

## **17 Scandalous matter**

A patent request and a complete specification of a complete application must not contain or consist of scandalous matter.



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## 18 Amendment of documents

- (1) If a proposed amendment is to be made by substituting a document or a part of a document, or the Commissioner requires the applicant or patentee to make a proposed amendment by that means, the applicant or patentee must file:
  - (a) two copies of the document or part that is to be substituted for a document or part; and
  - (b) on one of the copies, an indication of the nature and location of the proposed amendment.
- (2) The nature and location of an amendment is preferably indicated by the use of underlining for added text and a strikethrough for deleted text. The use of colour is permitted to further indicate the nature and location of an amendment.

Note: The form of amendments to documents is covered by regulation 10.1 of the Regulations.

## 19 Compliance with forms

Where this determination prescribes a form, strict compliance with the form is not required and substantial compliance is sufficient.

Note: This provision replicates the effect of section 25C of the *Acts Interpretation Act 1901*.