



Patents (Means and Form of Filing Documents) Instrument 2019

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

Dated 6 February 2019

Frances Roden

Frances Roden
Commissioner of Patents

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Part 1—Preliminary

1 Name

This instrument is the *Patents (Means and Form of Filing Documents) Instrument 2019*.

2 Commencement

This instrument commences immediately after the commencement of the *Patents (Means and Form of Filing Documents) Instrument 2019* made on 7 January 2019.

3 Authority

This instrument is made under the following provisions of the Act:

- (a) subsection 214A(1), for the purposes of section 214 of the Act; and
- (b) subsection 214B(1).

4 Definitions

In this instrument:

Act means the *Patents Act 1990*.

ALS (short for Alternative Lodgement Service) means the backup function accessible from IP Australia's website that can be invoked during outages of the digital lodgement systems.

API system (short for Application Programming Interface system) means any transactional interface, application, mobile application, website or the like that utilises an application programming interface provided by IP Australia.

B2B (short for Business to Business) means the electronic system known as B2B maintained by IP Australia.

digital lodgement systems means any website, mobile application or other similar system provided by IP Australia to lodge transactions.

Note: At the time this instrument commenced, the only digital lodgement system was the website known as eServices.

EFS (short for Emergency Facsimile Service) means the facsimile service that is provided by IP Australia when digital lodgement systems and ALS are unavailable due to planned or unplanned outage.

IP Lodgement Counter means a facility provided by IP Australia for the processing of transactions in person.

Note: At the time this instrument commenced, the IP Lodgement Counter was located at IP Australia, 47 Bowes Street, Phillip, ACT 2606.

Regulations means the *Patents Regulations 1991*.

WIPO means World Intellectual Property Organization.

5 Application of instrument

This instrument does not apply to a document mentioned in section 6 of the *Patents (Means and Form of Filing Documents and Evidence) (Opposition and Other Proceedings) Instrument 2019*.

Note: The *Patents (Means and Form of Filing Documents and Evidence) (Opposition and Other Proceedings) Instrument 2019* determines the means and form for filing documents and evidence for opposition and other proceedings in relation to patents.

6 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Part 2—Means and form for filing documents

7 Approved means of filing documents

- (1) A document is to be filed with the Patent Office using:
 - (a) the electronic means mentioned in subsection (2); or
 - (b) the other means mentioned in subsection (3).

Note: The Regulations deal with the filing date for patent applications: see regulations 3.5 to 3.5A of the Regulations. Where documents comprising a patent application are filed partly using electronic means and partly using other means, and the documents are received on different dates, the application of the Regulations may mean that the filing date for the application is the date on which the last document was filed.

- (2) For paragraph (1)(a), the electronic means are:
 - (a) digital lodgement systems;
 - (b) an API system;
 - (c) B2B;
 - (d) ALS;
 - (e) EFS, if no other electronic means is available.

Note: For a document (including any attachments) filed with the Patent Office using electronic means, the time of receipt of the document is the time in Canberra, ACT (Australian Eastern Standard/Daylight Time) when the entirety of the document is capable of being retrieved from IP Australia's information system: see section 14A of the *Electronic Transactions Act 1999*. Users should note that the time of receipt may be different to the time in the user's location.

- (3) For paragraph (1)(b), the other means are:
 - (a) post;
 - (b) delivery in person to the IP Lodgement Counter.

Note 1: At the time this instrument commenced, the postal address of the Patent Office was PO Box 200, Woden, ACT 2606.

Note 2: Section 29 of the *Acts Interpretation Act 1901* may govern when filing of a document with the Patent Office by post is taken to be effected.

8 Preferred means for filing documents

- (1) The preferred means for filing a document with the Patent Office are:
 - (a) digital lodgement systems; or
 - (b) an API system; or
 - (c) B2B.
- (2) If a person is attempting to file a document with the Patent Office by a means specified in subsection (1), and the person is unable to do so due to maintenance, the preferred means of filing a document is by ALS.

Note: At the time this instrument commenced, the *Alternative Lodgement Service user guide* provided guidance on using ALS, and was available on IP Australia's website at <http://www.ipaustralia.gov.au>.

- (3) For the purposes of subsection (2), if ALS is unavailable due to a planned or unplanned outage, the preferred means of filing a document is by EFS.
- (4) Where subsection (3) applies, the person must also complete and file a Declaration for use of Emergency Fax form.

Note 1: At the time this instrument commenced, the Declaration for use of Emergency Fax form was available on IP Australia's website at <http://www.ipaustralia.gov.au>.

Note 2: Under the Regulations, reduced fees may be payable for filing a document by preferred means: see subsection 227(2A) of the Act.

9 Form for filing documents—filing using electronic means

- (1) This section sets out the form in which a document, other than a document that is required to be in an approved form, is to be filed using electronic means, other than EFS.

Note: The *Patents (Formalities Requirements for Patent Documents) Determination 2019* sets out requirements for patent documents that apply in addition to the requirements of this section.

- (2) The document is to be in one of the following electronic file formats:
 - (a) Portable Document Format (PDF) (.pdf);
 - (b) Text (.txt);
 - (c) Word (.doc, .docx);
 - (d) XML (.xml);
 - (e) TIFF (.tif);
 - (f) PNG (.png);
 - (g) JPEG (.jpeg, .jpg);
 - (h) MP3 (.mp3);
 - (i) MPEG (.mpg, .mpeg).

Note: Approved forms are available on IP Australia's website at <http://www.ipaustralia.gov.au>, or on the relevant digital lodgement system.

- (3) Documents filed in MP3 or MPEG format may be provided to facilitate understanding of the invention, but must not form part of the specification.

10 Form for filing documents—filing using other means

- (1) This section sets out the form in which a document, other than a document that is required to be in an approved form, is to be filed using other means.
- (2) The document is to be filed in one or more of the following formats:
 - (a) hard copy document;
 - (b) electronic file on the following physical media:
 - (i) Compact Disc (CD);
 - (ii) Digital Versatile Disc (DVD).
- (3) If a document is an electronic file on physical media, the physical media must be enclosed in a hard case and accompanied by a transmittal letter on paper. The transmittal letter must list:
 - (a) the operating system compatibility (e.g. Windows, iOS, Linux);
 - (b) the files contained on the physical media including, for each file, the file name, the file size in bytes, and the date of creation.
- (4) Physical media must be labelled with the following information:
 - (a) the name of the sender;
 - (b) the name of the invention;
 - (c) any relevant reference number;
 - (d) creation date of the physical media;
 - (e) the order of media if the document extends over multiple media (e.g. CD 1 of 2);
 - (f) an indication of copy of submission if more than one copy is filed (e.g. Copy 1 or Copy 2).
- (5) Physical media identified for a digital lodgement systems request must be accompanied by the physical media coversheet generated by the digital lodgement system official receipt after submission.

Note: It is the practice of IP Australia not to return physical media.

Schedule 1 – Repeals

Patents (Means and Form of Filing Documents) Instrument 2019 made on 7 January 2019

1 The whole of the instrument

Repeal the instrument

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* has the effect that an instrument made under subsections 214A(1) or 214B(1) of the Act may be revoked.