

TERMS AND CONDITIONS

Before you register

Before you can register for our eServices, you must read, accept and agree to be legally bound by our Terms and Conditions ('Terms') relating to the eServices portal ('the Site').

By registering for, and subsequently accessing or using the Site, you acknowledge that you have read, accepted and agreed to be legally bound by these Terms, as updated from time to time.

These Terms explain our obligations and your obligations in any dealings or transactions you have with us.

TERMINOLOGY

In these Terms:

- 'you' and 'your' refers to each registered user of the Site and your organisation, if you are a representative of your organisation, and
- 'we', 'us' and 'our' refers to IP Australia.

LEGALLY BINDING AGREEMENT

By registering for, accessing or using the Site, you acknowledge that you have read, accepted and agreed to be legally bound by these Terms and any notices, protocols or guidelines appearing on or in connection with the Site, as amended from time to time. Any such notices, protocols or guidelines are hereby incorporated by reference as part of these Terms.

You acknowledge and agree that your access to, and use of, this Site is on an 'as is, as available', basis. IP Australia is in no way liable for your failure to access and otherwise use this Site.

These Terms explain our obligations to you, and your obligations to us, in any lodgements or transactions you make via this Site.

GUIDELINES ON USE OF ESERVICES

IP Australia may from time to time issue more detailed protocols, guidelines or instructions for use of the Site or for use of specific areas of the Site (as may be updated from time to time). These protocols, guidelines or instructions form part of these Terms and are legally binding on you.

Specific guidelines on the use of TM Headstart may be found in the TM Headstart Terms and Conditions.

ACCEPTABLE USE

In accessing and using this Site, you agree:

- that you may only use the Site strictly in accordance with these Terms, and all notices, protocols, guidelines and other instructions provided or advised to you by IP Australia from time to time;
- to provide true and correct information to IP Australia in respect of any lodgement or transaction made via this Site;
- not to falsely represent your authority to make a lodgement or transaction via this Site;
- not to impersonate any person or falsely represent your association with any person or organisation;
- not to provide false and misleading information in connection with this Site;
- not to access or attempt to access information resources you are not authorised to use;

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- to ensure that any lodgement or transaction using your login and password for this Site will only be undertaken by you;
- not to transmit any message, data, image or program that would violate the property rights of others, including unauthorised copyrighted text, images or programs, trade secrets or other confidential proprietary information;
- not to interfere with the rights of others to use the Site;
- not to use the facilities and capabilities of the Site to conduct any activity or solicit the performance of any illegal activity;
- not to attempt to modify, adapt, translate, sell, reverse engineer, decompile or disassemble any portion of the Site, including the use of automated tools;
- that you are responsible for any damage to your computer, systems or software caused by your use of this Site, including by any virus (irrespective of the origin of the virus) arising from your use of the Site;
- that you are responsible for accessing and reading notices and information provided by IP Australia in relation to the provision of eServices via this Site;
- that you will be deemed to have received email notices sent by IP Australia to your registered email address when such notices have been received by your email system; and
- that you will be deemed to have received one-time password notifications sent by IP Australia to your registered mobile phone number when such notifications have been received by your mobile device.
- that you will have been deemed to receive electronic correspondence when IP Australia has successfully dispatched the item to your eServices account.
- that IP Australia provides courtesy notification emails to the email address registered to your eServices account advising of any unread correspondence.
- that you are responsible for actively managing correspondence items that are successfully dispatched by IP Australia to your eServices account.

LODGEMENTS OR TRANSACTIONS USING THE SITE

IP Australia's generated records of the time of the lodgement or transaction are conclusive evidence of the time of lodgement or the transaction in the absence of conclusive proof to the contrary. The time of lodgement or the transaction is the time when the last relevant data byte is received by the IP Australia web server.

The date and time of receipt of a service request submitted using the IP Australia online eServices is the date and time in Canberra (Australian Eastern Standard/Daylight Savings Time) when the entirety of the service request (and any attachments) has entered IP Australia's information system. You should note that this may be different from the date and time in your location.

Any attachment to an online service request is not considered received by IP Australia until the entirety of the service request (and any attachment) has entered IP Australia's information system. The date and time of receipt of the attachment is the date and time of receipt of the service request (determined as above).

When a valid eServices transaction is completed, the date and time of receipt will appear in the online Acknowledgement. This information will also appear in the customer eServices history. If an Acknowledgement is not displayed, the service request may not have been received by IP Australia.

You should check your eServices History and with your financial institution (when payment was required) to determine if the service request has been submitted and/ or paid for. When no

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evidence of submission and payment exists or when no payment is required and no evidence of submission exists, you should resubmit the request. When payment has been made but no record of submission exists, you should contact IP Australia on 1300 65 1010.

IP Australia will confirm that you have successfully undertaken a lodgement or transaction via the Site and will present you with a reference number on-screen. Where you do not receive any confirmation from the Site that you have undertaken a successful lodgement or transaction it is your responsibility to relodge or resubmit your transaction. IP Australia disclaims all and any liability arising from your failure to take such remedial action.

If a payment made using the Site is ultimately declined by your financial institution, the corresponding lodgement or transaction will be deemed to be unsuccessful by IP Australia irrespective of any earlier confirmation issued to you by IP Australia that the lodgement or transaction was successful. In such circumstances, IP Australia will endeavour to notify you that the lodgement or transaction was unsuccessful as soon as it is made aware by your financial institution that payment was declined. IP Australia disclaims any and all liability for unsuccessful lodgements or transactions arising from such declined payments.

Where a lodgement or transaction is verified as meeting the requisite requirements, IP Australia will send an official notification in accordance with its standard procedures.

Where a lodgement, transaction or payment is verified as not meeting the requisite requirements, IP Australia will attempt to advise you in accordance with its standard procedures.

When in accordance with its standard procedures IP Australia is required to send IP Right related correspondence to you. IP Australia will, where appropriate, provide outbound correspondence electronically to your eServices account and send a notification to your registered email address.

OPERATION OF THE SITE

The Site has been implemented in a technical environment which is designed to provide high availability and to be reasonably fault tolerant. The target availability is 24 hours per day, 7 days per week other than during defined maintenance windows advised to you via the IP Australia website system availability page and official notices.

You acknowledge and agree that your use of this Site on an 'as is, as available' basis only and may not always be available during the specified operating hours. IP Australia makes no representation and gives no warranty that the eServices provided via the Site will meet your requirements, be uninterrupted, timely or error-free. IP Australia will attempt to inform you as soon as possible of any outage that might materially affect your normal use of the Site. However, IP Australia will not be liable for delay to transactions or disruption to your business or operations, or those of your organisation arising directly or indirectly from any such outage (whether or not the outage was notified to you by IP Australia in a timely manner or at all).

It is in your best interests to ensure that you have adequate contingency plans to protect the integrity of your business operations and those of your organisation and to ensure you and your organisation can proceed despite any disruption or delay occurring in respect of the Site.

IP Australia may alter, suspend or decommission this Site at any time without giving reasons. Where reasonably practicable, IP Australia will attempt to give 30 days prior notice of any such action but may give a shorter period of notice as it deems appropriate in its absolute discretion.

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You should promptly notify IP Australia if you discover or suspect any error or malfunction in the Site. In such an event, you agree to promptly provide to IP Australia information and details regarding any error or malfunction of the Site to the extent reasonably necessary to identify, confirm, investigate and rectify any such errors or difficulties (including where relevant any details of your operating environment or that of your organisation).

ACCESS AND PASSWORD

When you register with IP Australia you provide a username and password that can later be used to log on to our secure facilities. This username and password is linked to your eServices account and consequently allows you to access the Site. We ask you to provide three sets of questions and answers called secret questions. These secret questions provide an additional method of verifying your identity in case you forget your password or need other assistance. A one-time password will be provided if your account needs to be reset or reactivated, and this can be provided via SMS if a mobile number is registered on your account.

Encryption together with your username and passwords ensures the confidentiality, integrity and authenticity of your electronic transactions. It is your responsibility to protect your password from disclosure to unauthorised individuals. Registered organisations should only allow authorised individuals access to the username, password, customer reference number and secret questions. Do not distribute or publish, in any form, this information to unauthorised individuals.

You agree to:

- be responsible for all activities that occur under your username and password;
- maintain the confidentiality of your password and secret questions;
- change your password on a regular basis;
- not save your password on the computer that you are using to access this Site;
- change your password if it becomes known to unauthorised persons;
- cancel your eServices registration if it is associated with a registered organisation and you leave that organisation;
- contact us if your username, password or secret questions have been lost, stolen or otherwise compromised; and
- log out at the end of each session.

SECURITY

It is a condition of you using eServices that you must not:

- tamper with other accounts, or commit unauthorised intrusion into any part of the Site;
- attempt to bypass any security controls;
- use the Site in a manner that encumbers disk space, processors or other system resources;
- make deliberate attempts to interfere with the functionality of the Site, overload the Site or attempt to disable a host;
- attempt to use the Site without authorisation and
- transmit any file with malicious content

MONITORING

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The effective management and security of eServices requires that usage is routinely monitored and analysed for evidence of misuse and attempted or actual security breaches. You consent to this monitoring being undertaken by IP Australia in connection with your use of the Site.

Further information on user monitoring may be found in the IP Australia Privacy Policy.

PRIVACY

Your personal is protected by the Privacy Act 1998. Your personal information is collected for the purposes of:

- Intellectual Property (IP) Rights legislation:
- Patents Act 1990 and the Patents Regulations 1991;
- Trade Marks Act 1995 and the Trade Marks Regulations 1995;
- Designs Act 2003 and the Designs Regulations 2004; and
- Plant Breeder's Rights Act 1994 and the Plant Breeder's Rights Regulations 1994

OR

Freedom of Information requests under the Freedom of Information Act 1982.

If you do not provide your personal information IP Australia may not be able to process your form.

If you are completing the relevant form on behalf of another person or providing another person's personal information, you must ensure that you have obtained consent from that individual to disclose their personal information and that you have provided the person with this privacy notice, specifically to make the person aware of the information in paragraphs 51-63, regarding the handling of their personal information.

Any personal information you provide will be used to process the form and for any other purposes for which you have completed the form. IP Australia, or third party consultants acting on its behalf, may also contact you, using the contact details you have provided, to request your feedback on our products and services.

Personal information collected may be used and disclosed for the purposes of oppositions proceedings, including to other relevant parties.

IP Australia may disclose any personal information collected on forms to the (WIPO) in Geneva, Switzerland and foreign government IP Rights bodies for the purposes of any international IP Rights agreements, treaties or conventions. Once personal information is provided to WIPO or a foreign government IP Rights body, IP Australia has no control over its subsequent use and disclosure.

Any personal information you provide may be disclosed to a third party who has been approved by IP Australia to obtain such access. Details of the approval process can be found at:

IP Australia may publish any of the following information:

- names;
- addresses;
- employment details (if applicable); and
- details of the relevant IP Right

in the relevant Official Journal, Register, and IP Australia's online IP Rights databases contact details.

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IP Australia may also make the entire completed form available in a downloadable format on our online IP Rights databases. Once information is available on the internet, IP Australia has no control over its subsequent use and disclosure. You should be aware that the information (including personal information) held in IP Australia's online IP Rights databases are also available on request, subject to our terms and conditions.

IP Australia's Privacy Policy contains information about:

how you may seek access to and correction of the personal information we hold;

how you may make a complaint about a breach of the Privacy Act and how we will deal with your complaint; and

eIP Australia's Privacy Officer details.

IP Australia will disclose your credit card payment information:

- cardholder name;
- credit card number;
- expiry; and
- verification code

to our financial payment provider (either Commonwealth Bank, National Australia Bank or EWay) for the purposes of processing your payment.

You agree that IP Australia may store or process information received by the API on third party platforms (cloud computing), in accordance with IP Australia's Privacy Policy.

You also agree that IP Australia may collect information about your use of the API. You agree to IP Australia collecting, using and disclosing this information, and any other information you provide to us, for the purposes of evaluation, monitoring, security, auditing, record-keeping, providing enhancements to the API.

Disclosure of personal information - IP Rights

Personal information collected may be used and disclosed for the purposes of oppositions proceedings, including to other relevant parties. IP Australia may disclose any personal information collected on eServices forms to the World Intellectual Property Organization (WIPO) in Geneva, Switzerland for the purposes of any international IP Rights agreements, treaties or conventions. Once personal information is provided to WIPO, IP Australia has no control over its subsequent use and disclosure.

IP Australia may publish any of the following information:

- names;
- addresses;
- employment details (if applicable); and
- details of the relevant IP Right in the relevant Official Journal, Register, and IP Australia's online IP Rights databases contact details.

IP Australia may also make the entire completed form available in a downloadable format on our online IP Rights databases. Once information is available on the internet, IP Australia has no control over its subsequent use and disclosure. You should be aware that the information (including

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personal information) held in IP Australia's online IP Rights databases, including Application Programming Interfaces (APIs) are also available on request, subject to our terms and conditions.

Consent and other matters

By completing any eServices form, you provide your consent to your personal information being handled in accordance with this privacy notice and our privacy policy; and disclosed to overseas recipients as provided above.

When you provide your consent to your personal information being disclosed to overseas recipients, you understand that IP Australia will not be accountable for any subsequent use under the Privacy Act, nor are you able to seek redress under that Act, for the actions of any overseas recipient.

IP Australia will not otherwise use or disclose your personal information without your consent, unless authorised or required by or under law.

As far as your personal information is concerned:

- you may provide a post office box address if you do not want your residential address to be published; and
- if you do not provide the personal information required on the form, IP Australia may not be able to process the form.

SUPPORT

IP Australia will ordinarily provide business and technical support for the Site between the hours of 9am and 5pm Monday to Friday (excluding public holidays and IP Australia shut-down periods as specified on the IP Australia website and official notices).

LIABILITY AND INDEMNITY

You agree that IP Australia will not be liable to you or your organisation for any loss or damage whatsoever that you or your organisation suffers or may suffer that arises directly or indirectly from:

- your use of, or inability to use, this Site;
- unauthorised access to or alterations of your transmissions or data;
- activities resulting from the loss or misuse of your username and password;
- Any attempt to use the Site without authorisation. This includes but is not limited to password cracking, social engineering (defrauding others into releasing their passwords), denial-of-service attacks, sending packets with an illegal packet size, UDP flooding, ping-flooding, half-open TCP connection flooding, harmful alterations of services, harmful and malicious destruction of data, injection of computer viruses, distribution of viruses through the use of eServices, intentional invasion of privacy, reading of files without authorization; and
- any other matter relating to the eServices or this Site.
- You and your organisation agree to indemnify and hold harmless IP Australia from and against any loss, damage, cost, expense, claim proceeding or liability of any kind that IP Australia may incur to any third party that arises directly or indirectly from:
- your breach of these Terms; and

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- your use of this Site and your activities in connection with this Site, except to the extent that any such loss, damage, cost, expense, claim proceeding or liability arises solely from any act or omission involving fault on the part of IP Australia.

TERMINATION OF USE

You may cancel your registration with the Site at any time through the cancellation process available from the eServices information page on our IP Australia corporate website.

IP Australia may immediately terminate your registration, access to and use of this Site by notice to you, if it determines that you have breached any of these Terms.

IP Australia may suspend your registration, access to and use of this Site if IP Australia considers it necessary to protect its interests or those of any other person while it investigates any technical or operational issue or breach of security or a possible breach of these Terms.

IP Australia reserves the right to report any offence to the proper authorities, if necessary.

IP Australia may also terminate your registration, use of or access to this Site for its own reasons and without any fault on your part provided that in such circumstances IP Australia will attempt to give you not less than 30 days prior written notice of such termination where it considers that this is appropriate in its absolute discretion.

IP Australia will not accept any eServices lodgements or transactions from you via this Site after the date of termination.

NOTICES

You agree that IP Australia may notify you of any changes to your registration, access and use of the Site and of any changes to these Terms by publication of a notice on the Site. In such circumstances, IP Australia may, but is not bound to, also issue an email notification to your registered email address.

AMENDMENTS TO THE TERMS

IP Australia may amend these Terms at any time, and you agree to be bound by any such amendments immediately upon notification of the amendments being posted on the Site. IP Australia may also, at its discretion, require you to accept the amended Terms prior to allowing you continued access to the Site.

If you do not wish to be bound by any changes to the Terms, you must immediately seek cancellation of your registration to the Site from the eServices information page and no longer use or access the Site.

GOVERNING LAW AND JURISDICTION

These Terms are governed by the laws of the Australian Capital Territory. The parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.