



## Trade Marks (Means and Form of Filing Documents) Instrument 2019

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I, Frances Roden, Registrar of Trade Marks, make the following instrument.

Dated 14 January 2019

*Frances Roden*

Frances Roden  
Registrar of Trade Marks

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## Part 1—Preliminary

### 1 Name

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

### 2 Commencement

- (1) Each provision of this instrument 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 instrument | At the same time as Parts 2 and 3 of Schedule 2 to the <i>Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Act 2018</i> .<br><br>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Note 1: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

Note 2: Parts 2 and 3 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 6 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 instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

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

- (a) subsection 213A(1), for the purposes of section 213 of the Act; and
- (b) subsection 213B(1).

### 4 Definitions

In this instrument:

*Act* means the *Trade Marks Act 1995*.

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**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 channel 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 *Trade Marks Regulations 1995*.

## 5 Application of instrument

This instrument does not apply to a document mentioned in section 5 of the *Trade Marks (Means and Form of Filing Documents and Evidence) (Opposition and Other Proceedings) Instrument 2019*.

Note: The *Trade Marks (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 trade marks.

## Part 2—Means and form for filing documents

### 6 Approved means of filing documents

- (1) A document is to be filed with the Trade Marks 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 trade mark applications: see regulation 4.2 of the Regulations. Where documents comprising a trade mark 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;

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- (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 Trade Marks 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 Trade Marks 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 Trade Marks Office by post is taken to be effected.

## 7 Preferred means of filing documents

- (1) The preferred means for filing a document with the Trade Marks 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 Trade Marks Office by a means specified in subsection (1), and they are unable to do so due to maintenance, the preferred means of filing a document is by ALS.

Note 2: 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 223(2A) of the Act.

## 8 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.

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Note: The Regulations set out requirements for trade marks documents that apply in addition to the requirements of this section: see regulations 21.2 and 21.3.

(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) A sound file must be filed in MP3 format.

(4) A video file must be filed in MPEG format.

(5) An image file (TIFF, PNG and JPG) must use standard Red Green Blue (sRGB) colour space.

(6) An image file must be at least 4cm by 2cm at 200 dots per inch (315 by 157 pixels) and must not exceed 29.7cm by 21cm at 600 dots per inch (7015 by 4960 pixels).

(7) Where 2 or more files must be presented in a specific order (such as stills from a moving image), the name of each file must begin with a number indicating its sequence.

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

## **9 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, that 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.

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- (4) Physical media identified for a digital lodgement systems request must be accompanied by the physical media coversheet that can be printed from within the digital lodgement systems official receipt after submission.

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