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IP Australia kick starts the draft IP legislation 2017

John Collins, Sumer Dayal, Nicole Flax (Clayton Utz) · Thursday, December 22nd, 2016

IP Australia has recently published its [Exposure Drafts](#) for the *Intellectual Property Laws Amendment Bill 2017* and the *Intellectual Property Laws Amendment Regulations 2017* for public comment.

The amendments aim to “*align and streamline the processes for obtaining, maintaining and challenging intellectual property (IP) rights*” and to “*reduce the regulatory burden for businesses that use it, and decrease administration costs for the Australian government*”. The amendments are particularly concerned with helping small to medium enterprises (SMEs) with their relevant application processes.

With respect to the Patents Act, some of the notable proposals are as follows.

“Aligning and streamlining”

IP Australia expresses concern that the differences in rules and administrative processes for each IP right create unnecessary “*complexity, uncertainty and cost*” for users of the IP system. Amendments designed to resolve these issues include:

- **renewal regimes and terminology** – the draft Regulations prescribe a continuation period beginning 12 months before the anniversary and ending 6 months after the anniversary of a standard patent application. If a patentee pays the continuation fee within the prescribed period, the draft Bill prescribes that the application will not lapse but remain in force.
- **improved examination, re-examination and reconsideration processes** – the draft Regulations limit re-examination to a six-month period commencing on the date that the first re-examination report is issued. The draft Bill also allows applicants to provide multiple reports and responses within this fixed time period.
- **reformed extension of time provisions** – the draft Regulations prescribe an explicit deadline for applications for an extension of time, either two months from the discovery of the error or omission or two months from when the circumstances beyond the applicant’s control no longer exist. In addition, the Commissioner’s discretion to grant or refuse an extension would be removed under the draft Bill.

Bringing applications into the 21st Century

The draft legislation seeks to increase the flexibility of the patent application process by:

- **allowing electronic communications** – the Commissioner would be able to make use of any means of communication, including electronic means, rather than being restricted to communication “in writing”;
- **enabling computerised decision-making** – the draft Bill allows computer systems to be used for decisions where little human input is required. IP Australia intends to undertake further public consultation in relation to decisions that are suitable for computerised processing.
- **allowing the Commissioner to prescribe formalities** – the formalities for complete patent applications and specifications would be prescribed by the Commissioner rather than the Patent Regulations. The Commissioner can thus ensure that these requirements adapt to changes in technology and international obligations. For example, the Commissioner can permit the use of colour drawings, graphics and photographs in patent applications.

Other amendments

- IP Australia proposes to make additional damages available for flagrantly unjustified threats of patent infringement.
- The personal information of registered patent attorneys will now be published, to enable the public to verify that an attorney is registered to practice in Australia or New Zealand.

Final submissions on the Exposure Drafts are due by 22 January 2017.

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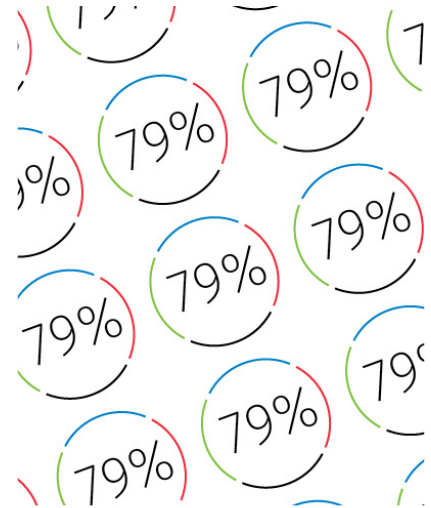
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