



**Patents Amendment Regulations 2001 (No. 3)<sup>1</sup>**

**Statutory Rules 2001 No. 345<sup>2</sup>**

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I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Patents Act 1990*.

Dated 20 December 2001

PETER HOLLINGWORTH  
Governor-General

By His Excellency's Command

IAN MACFARLANE  
Minister for Industry, Tourism and Resources

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**1 Name of Regulations**

These Regulations are the *Patents Amendment Regulations 2001 (No. 3)*.

**2 Commencement**

These Regulations commence as follows:

- (a) on gazettal — regulations 1 to 3 and Schedule 1;
- (b) on 1 January 2002 — Schedule 2.

**3 Amendment of *Patents Regulations 1991***

Schedules 1 and 2 amend the *Patents Regulations 1991*.

**Schedule 1 Amendments commencing on gazettal**  
(regulation 3)

**[1] Paragraph 8.4 (2) (a)**

*omit*

specified in paragraphs 4.3 (c), (d) and (e);

*insert*

mentioned in paragraphs 4.3 (1) (c), (d) and (e);

**[2] Paragraph 8.4 (2) (c)**

*omit*

referred to in regulation 4.3,

*insert*

mentioned in subregulation 4.3 (1),

**[3] Subregulation 20.25 (4)**

*substitute*

(4) A former attorney, who has been given a notice under subregulation (3), must not refuse to comply with a requirement in the notice.

Penalty: 5 penalty units.

(5) However, it is a defence to a prosecution for an offence against subregulation (4) if the former attorney has a reasonable excuse.

*Note* A defendant bears an evidential burden in relation to the question whether he or she has a reasonable excuse (see section 13.3 of the *Criminal Code*).

**[4] Subregulation 20.27 (3)**

*substitute*

(3) A person must comply with a direction given to him or her under this regulation.

Penalty: 5 penalty units.

**[5] Paragraph 20.29 (1) (a)**

*omit*

produce any documents

*insert*

produce any documents or articles

**[6] Paragraph 20.29 (1) (b)***substitute*

- (b) summon the attorney to appear before the Tribunal:
  - (i) to produce any documents or articles mentioned in the summons; and
  - (ii) to give evidence to identify the documents or articles.

**[7] Subregulations 20.30 (1) to (3)***substitute*

- (1) A person summoned to appear before the Disciplinary Tribunal must comply with the summons by:
  - (a) appearing as required by the summons; and
  - (b) producing documents or articles as required by the summons; and
  - (c) appearing and reporting to the Tribunal from day to day.

Penalty: 10 penalty units.

- if:
- (1A) However, it is a defence to a prosecution for an offence against subregulation (1)
    - (a) the defendant has a reasonable excuse; or
    - (b) in relation to paragraph (1) (c) — the defendant is excused by the Tribunal.

*Note* A defendant bears an evidential burden in relation to the matters mentioned in subregulation (1A) (see section 13.3 of the *Criminal Code*).

- (2) A person commits an offence if:
  - (a) the person:
    - (i) is not a registered patent attorney to whom subregulation (3) applies; and
    - (ii) appears as a witness before the Disciplinary Tribunal; and
    - (iii) has been paid expenses and allowances; and
  - (b) the expenses and allowances have been determined by the Tribunal in accordance with Part 2 of Schedule 8; and
  - (c) the person refuses:
    - (i) to be sworn or make an affirmation; or
    - (ii) to answer a question relevant to the evidence that he or she was summoned to give.

Penalty: 10 penalty units.

- (2A) However, it is a defence to a prosecution for an offence against subregulation (2) if the person has a reasonable excuse.

*Note* A defendant bears an evidential burden in relation to the question whether he or she has a reasonable excuse (see section 13.3 of the *Criminal Code*).

- (2B) Strict liability applies to the physical element of an offence against subregulation (2) that is constituted by:

- (a) the circumstance mentioned in subparagraph (2) (a) (i); and
- (b) the circumstance mentioned in paragraph (2) (b).

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) A person commits an offence if the person:

- (a) is a registered patent attorney against whom proceedings have been instituted; and
- (b) is summoned to appear at a hearing before the Disciplinary Tribunal in respect of those proceedings; and
- (c) refuses:
  - (i) to be sworn or to make an affirmation; or
  - (ii) to answer a question relevant to the evidence that he or she was summoned to give.

Penalty: 10 penalty units.

- (3A) However, it is a defence to a prosecution for an offence against subregulation (3) if the person has a reasonable excuse.

*Note* A defendant bears an evidential burden in relation to the question whether he or she has a reasonable excuse (see section 13.3 of the *Criminal Code*).

**[8] Subregulation 20.30 (4)**

*omit*

or fail

**Schedule 2 Amendments commencing on 1 January 2002**  
(regulation 3)

**[1] Subregulation 1.4 (2)**

*omit*

1 March 2001

*insert*

1 January 2002

**[2] Schedule 2A, Schedule of Fees, item 2 (a), column 2**

*omit*

in excess of 6

*insert*

in excess of 5

**[3] Schedule 7, Part 4, item 2**

*substitute*

- 2 Designation fee for designations made under Rule 4.9 (a) of the PCT in an international application:
- (i) if the application makes 5 or fewer such designations — 140 Swiss francs per designation; or
  - (ii) if the application makes 6 or more such designations — 700 Swiss francs

**Notes**

1. These Regulations amend Statutory Rules 1991 No. 71, as amended by 1991 No. 456; 1992 No. 148; 1993 Nos. 113, 227, 340 and 341; 1994 Nos. 182, 317 and 387; 1995 Nos. 16, 20, 82 and 427; 1996 No. 271; 1997 Nos. 192 and 345; 1998 Nos. 45, 56, 141, 241, 257, 264, 291, 319, 342 and 345; 1999 Nos. 154, 184, 261 and 349; 2000 No. 317; 2001 Nos. 98 and 184.
2. Notified in the *Commonwealth of Australia Gazette* on 21 December 2001.