



Patents Amendment Regulations 2002 (No. 4)¹

Statutory Rules 2002 No. 317²

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 12 December 2002

PETER HOLLINGWORTH
Governor-General

By His Excellency's Command

IAN MACFARLANE
Minister for Industry, Tourism and Resources

Contents

- 1 Name of Regulations
- 2 Commencement
- 3 Amendment of *Patents Regulations 1991*
- 4 Transitional

Schedule 1 Amendments commencing on gazettal**Schedule 2 Amendments commencing on 1 January 2003**

1 Name of Regulations

These Regulations are the *Patents Amendment Regulations 2002 (No. 4)*.

2 Commencement

These Regulations commence as follows:

- (a) on gazettal — regulations 1 to 3 and Schedule 1;
- (b) on 1 January 2003 — regulation 4 and Schedule 2.

3 Amendment of *Patents Regulations 1991*

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

4 Transitional

- (1) The amendments made by items [1] to [4] and [6] to [15] of Schedule 2 apply in relation to an international application if the international filing date of the application is a date on or after 1 January 2003.
- (2) The amendments made by items [5] and [16] of Schedule 2 apply in relation to an international application if the applicable time limit under Article 22 or 39(1) of the PCT expires on or after 1 January 2003.

Note *international application*, *international filing date* and *PCT* have the meanings given in the dictionary in Schedule 1 to the Act.

Schedule 1 Amendments commencing on gazettal
(regulation 3)

[1] Subregulation 1.4 (1)

omit

30 April 1991

insert

1 October 2002

[2] Schedule 1A, Adoption and amendment dates, after the table of provisions

omit

amended on January 20, 1981

insert

amended on January 20, 1981 and on October 1, 2002

[3] Schedule 1A, Rule 13.1

substitute

13.1 *Form of Publication*

Any publication by the International Bureau referred to in the Treaty or these Regulations shall be made on paper or in electronic form.

[4] Schedule 1A, paragraph 13.2 (a)

substitute

(a) At least once a year, preferably in the first quarter of the year, an up-to-date list of the international depository authorities shall be published, indicating in respect of each such authority the kinds of microorganisms that may be deposited with it and the amount of the fees charged by it.

[5] Schedule 1A, paragraph 13.2 (b)

omit everything before subparagraph (i), insert

(b) Full information on any of the following facts shall be published once, promptly after the occurrence of the fact:

[6] Schedule 2A, Schedule of Fees, item 4

omit

filed on paper together with a copy thereof in electronic form.

insert

filed:

(a) on paper together with a copy thereof in electronic form; or

(b) in electronic form.

[7] Schedule 4

after

Senegal

insert

Seychelles

Schedule 2 Amendments commencing on 1 January 2003
(regulation 3)

[1] Subregulation 1.4 (2)

omit

1 April 2002

insert

1 January 2003

[2] Schedule 2A, Adoption and amendment dates, before the table of provisions

omit

October 3, 2000 and on October 3, 2001.

insert

October 3, 2000, on October 3, 2001 and on October 1, 2002.

[3] Schedule 2A, Table of Provisions

omit

Rule 12 Language of the International Application and Translation for the Purposes of International Search

insert

Rule 12 Language of the International Application and Translation for the Purposes of International Search and International Publication

[4] Schedule 2A, Table of Provisions

after

12.3 Translation for the Purposes of International Search

insert

12.4 Translation for the Purposes of International Publication

[5] Schedule 2A, Table of Provisions

after

49.5 Contents of and Physical Requirements for the Translation

insert

49.6 Reinstatement of Rights After Failure to Perform the Acts Referred to in Article 22

[6] Schedule 2A, Rule 12, heading

substitute

*Rule 12
Language of the International Application and Translation
for the Purposes of International Search and International Publication*

[7] Schedule 2A, paragraph 12.1 (c)

substitute

(c) Notwithstanding paragraph (a), the request shall be filed in any language of publication which the receiving Office accepts for the purposes of this paragraph.

[8] Schedule 2A, subparagraph 12.2 (b) (i)

omit

48.3 (b)

insert

12.4 (a)

[9] Schedule 2A, paragraph 12.3 (e)

omit

basic fee.

insert

basic fee referred to in item 1 (a) of the Schedule of Fees.

[10] Schedule 2A, after Rule 12.3

insert

12.4 Translation for the Purposes of International Publication

(a) Where the language in which the international application is filed is not a language of publication and no translation is required under Rule 12.3 (a), the applicant shall, within 14 months from the priority date, furnish to the receiving Office a translation of the international application into any language of publication which the receiving Office accepts for the purposes of this paragraph.

(b) Paragraph (a) shall not apply to the request nor to any sequence listing part of the description.

(c) Where the applicant has not, within the time limit referred to in paragraph (a), furnished a translation required under that paragraph, the receiving Office shall invite the applicant to furnish the required translation, and to pay, where applicable, the late furnishing fee required under paragraph (e), within 16 months from the priority date. Any translation received by the receiving Office before that Office sends the invitation under the previous sentence shall be considered to have been received before the expiration of the time limit under paragraph (a).

(d) Where the applicant has not, within the time limit under paragraph (c), furnished the required translation and paid any required late furnishing fee, the international application shall be considered withdrawn and the receiving Office shall so declare. Any translation and any payment received by the receiving Office before that Office makes the declaration under the previous sentence and before the expiration of 17 months from the priority date shall be considered to have been received before the expiration of that time limit.

(e) The furnishing of a translation after the expiration of the time limit under paragraph (a) may be subjected by the receiving Office to the payment to it, for its own benefit, of a late furnishing fee equal to 50% of the basic fee referred to in item 1 (a) of the Schedule of Fees.

[11] Schedule 2A, paragraph 22.1 (h)

omit

12.3,

insert

12.3 or 12.4,

[12] Schedule 2A, subparagraph 26.3 (b) (ii)

after

12.3

insert

or 12.4

[13] Schedule 2A, paragraph 29.1 (a)

after

12.3 (d)

insert

or 12.4 (d)

[14] Schedule 2A, paragraph 48.3 (a^{bis})

omit

12.3,

insert

12.3 or 12.4,

[15] **Schedule 2A, paragraph 48.3 (b)**

omit

[16] **Schedule 2A, after Rule 49.5**

insert

49.6 Reinstatement of Rights After Failure to Perform the Acts Referred to in Article 22

(a) Where the effect of the international application provided for in Article 11 (3) has ceased because the applicant failed to perform the acts referred to in Article 22 within the applicable time limit, the designated Office shall, upon request of the applicant, subject to paragraphs (b) to (e) of this Rule, reinstate the rights of the applicant with respect to that international application if it finds that any delay in meeting that time limit was unintentional or, at the option of the designated Office, that the failure to meet that time limit occurred in spite of due care required by the circumstances having been taken.

(b) The request under paragraph (a) shall be submitted to the designated Office, and the acts referred to in Article 22 shall be performed, within whichever of the following periods expires first:

- (i) two months from the date of removal of the cause of the failure to meet the applicable time limit under Article 22; or
- (ii) 12 months from the date of the expiration of the applicable time limit under Article 22;

provided that the applicant may submit the request at any later time if so permitted by the national law applicable by the designated Office.

(c) The request under paragraph (a) shall state the reasons for the failure to comply with the applicable time limit under Article 22.

(d) The national law applicable by the designated Office may require:

- (i) that a fee be paid in respect of a request under paragraph (a);
- ii) that a declaration or other evidence in support of the reasons referred to in paragraph (a) be filed.

(e) The designated Office shall not refuse a request under paragraph (a) without giving the applicant the opportunity to make observations on the intended refusal within a time limit which shall be reasonable under the circumstances.

(f) If, on October 1, 2002, paragraphs (a) to (e) are not compatible with the national law applied by the designated Office, those paragraphs shall not apply in respect of that designated Office for as long as they continue not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by January 1, 2003. The information received shall be promptly published by the International Bureau in the Gazette.

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, 184 and 345; 2002 Nos. 59, 100, 173 and 263.
 2. Notified in the *Commonwealth of Australia Gazette* on 19 December 2002.
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