



Patents Amendment Regulations 2004 (No. 2)¹

Statutory Rules 2004 No. 193²

I, PHILIP MICHAEL JEFFERY, 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 24 June 2004

P. M. JEFFERY
Governor-General

By His Excellency's Command

IAN MACFARLANE
Minister for Industry, Tourism and Resources

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Schedule 1 Amendments commencing on gazettal

Schedule 2 Amendments commencing on 1 July 2004

1 Name of Regulations

These Regulations are the *Patents Amendment Regulations 2004 (No. 2)*.

2 Commencement

These Regulations commence as follows:

- (a) on the date of notification in the *Gazette* — regulations 1 to 3 and Schedule 1;
- (b) on 1 July 2004 — regulation 4 and Schedule 2.

3 Amendment of *Patents Regulations 1991*

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

4 Transitional — amendments made by Schedule 2

- (1) This regulation applies to a PCT application that, before 1 July 2004 was not open to public inspection.
- (2) If the PCT application was filed before 1 January 2004, regulations 8.3, 8.4 and 13.5 of the *Patents Regulations 1991*, as in force immediately before 1 July 2004, continue to apply in relation to the application.
- (3) If the PCT application was filed after 31 December 2003 and published under Article 21 of the PCT before 1 July 2004, it is taken, for paragraph 90 (b) of the Act as modified under regulation 8.3 of the *Patents Regulations 1991*, to have been published on 1 July 2004.

Schedule 1 Amendments commencing on gazettal
(regulation 3)

[1] Schedule 4

after

Algeria

insert

Andorra

[2] Schedule 4

after

Benin

insert

Bhutan

[3] Schedule 4

after

Senegal

insert

Serbia and Montenegro

[4] Schedule 4

omit

United Republic of Tanzania

[5] Schedule 4

omit

Yugoslavia

[6] Further amendments

<i>Provision</i>	<i>omit</i>	<i>insert</i>
Schedule 4	Cambodia, Kingdom of	Cambodia
Schedule 4	Macau	Macau, China
Schedule 4	Sao Tome and Principe, Democratic Republic of	Sao Tome and Principe
Schedule 4	Surinam	Suriname

Schedule 2 Amendments commencing on 1 July 2004
(regulation 3)

[1] After subregulation 8.3 (1B)

insert

(1C) Paragraph 90 (a):

omit

subsection 92 (1) or (2)

insert

subsection 92 (2)

(1D) Paragraph 90 (b):

substitute

(b) where subsection 92 (3) applies — on the day on which the application is published under Article 21 of the PCT.

(1E) Section 92:

substitute

92 Notice of publication

(1) Subsection (2) applies to a PCT application:

- (a) that has not lapsed, or been withdrawn or refused; and
- (b) that is to be treated as an application for a standard patent under this Act; and
- (c) for which the applicant complies with subsection 89 (3) before the end of 18 months after the priority date of the application.

(2) The Commissioner must publish a notice in the *Official Journal* stating that the PCT application is open to public inspection:

- (a) if the applicant asks the Commissioner in writing to publish the notice; or
- (b) in any case — as soon as practicable after the end of 18 months after the priority date of the application.

(3) If:

- (a) the applicant does not comply with subsection 89 (3) within 18 months after the priority date of a PCT application; and
- (b) the application is published under Article 21 of the PCT;

the application is open to public inspection.

(4) If a PCT application is open to public inspection, any other prescribed documents are also open to public inspection.

(5) In this section:

priority date, for an international application, has the same meaning as in the PCT.

[2] Subregulation 8.4 (1)

omit

under subsection 92 (1)

insert

for publication under section 92 of the Act

[3] Regulation 13.5

omit

If

insert

(1) If

[4] Regulation 13.5

insert

(2) Subregulation (1) does not apply in relation to a PCT application that is treated as a patent application under the Act, if the PCT application lapses under paragraph 142 (2) (f) of the Act.

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, 263 and 317; 2003 Nos. 71, 213 and 316; 2004 No. 23.
2. Notified in the *Commonwealth of Australia Gazette* on 1 July 2004.