



Australian Government
IP Australia

A guide to applying for your design



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Disclaimer

This application guide should not be regarded as an authoritative statement on the relevant law and procedure. Whilst we make every effort to ensure the information presented is accurate and up to date, you should check with us before relying on the information. Although our staff cannot give you advice about your particular circumstances, we can answer general questions about the Australian Designs system. We recommend that you seek professional assistance before applying for a design.



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What is a design?

A design is the overall appearance of a product. The visual features that form the design include the shape, configuration, pattern and ornamentation of the product.

A design does not include the feel of the product, what it is made from or how it works.

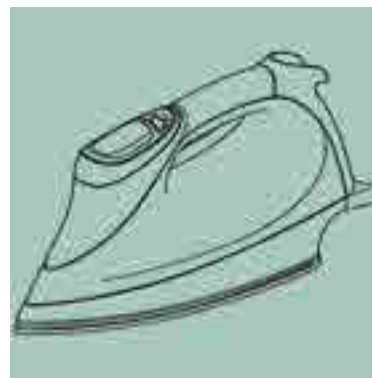
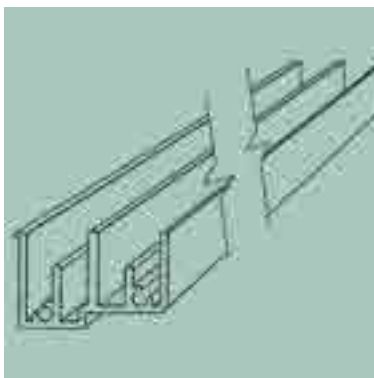
A design is a type of intellectual property and in Australia it may be published or registered under the *Designs Act 2003*, (the Designs Act).

To be registrable, a design must be new and distinctive. 'New' means the design has not been publicly used in Australia nor has it been published in a document within or outside Australia.

For example, a design application would not be considered new if it had been 'published' on the internet before the priority date.

A design is distinctive if it is not substantially similar in overall impression to other designs already in the public domain (not been publicly used in Australia nor has it been published in a document within or outside Australia).

Examples of registered designs



The benefits of registration

A registered design can be a valuable commercial asset. As the registered owner, you:

- have the exclusive right to use the design specified in your registration
- have the exclusive right to authorise other people to use your design as specified in the registration
- have a registered design which is 'personal property' that can grow in value and can be sold
- have a registration which covers the whole of the Commonwealth of Australia.

Many registered design owners will not need protection beyond registration for their design. However, for those who need to enforce protection of their design, i.e. to sue for infringement, registration is the first step.

If you own a registered design you have the right to enforce your design once it has been examined and a certificate of examination has been issued ('certified'). If another person uses your registered design without your permission, you can take action to stop them using it after certification.

The length of protection

Registration initially protects your design for **five years from the date the application was filed**. The design registration can be renewed for a further five years. If you do not renew your registration it will cease. Once the design has ceased it passes into the public domain and is free for anyone to use.

Not all designs are registrable

You cannot register a design featuring:

- medals
- layout for an integrated circuit
- the Olympic rings symbol, the Olympic motto or the torch and flames design, prescribed under the *Olympic Insignia Protection Act 1987*
- the word 'Anzac'
- information or graphics which might reasonably be regarded as scandalous
- notes of a kind prohibited by subsection 19(1) of the *Crimes (Currency) Act 1981*
- the coat of arms, flags or seal of the Commonwealth or any State of the Commonwealth
- the coat of arms or emblems of any city or town in the Commonwealth or any State, Territory, public authority or public institution in Australia
- armorial bearings, flags, State emblems or signs of any country other than the Commonwealth.

Publication

An alternative option to registration is publication. Publishing a design does **not give you any rights in respect of the design** however it may be used for strategic purposes. Publication is used to **prevent others from obtaining certification for the same or substantially similar design, as the design is no longer considered new or distinctive.**

Searching

Before filing a design application, it is a good idea to conduct a search of existing registered designs. If your registered design is not new and distinctive you may not be able to gain certification. You may also face legal action if you infringe the design rights of the owners of other similar designs.

Our [Australian Designs Data Searching \(ADDS\)](#) database has images of all registered designs from 1985.

Professional searches can also be conducted by patent attorneys and search firms.

Professional assistance

Patent attorneys and lawyers can provide professional help in applying to register or publish your design or in maintaining your registered design. See our website for information about how to [contact an IP professional](#).

Filing your design application

Who can apply

Any person can file a design application but the application must specify the person/s entitlement to be the owner/s of the design registration.

The applicant must provide a contact address, phone number or email address.

The application form

You can apply online using [eServices](#). You can also download an application form from [our website](#). Alternatively you can [contact us](#) for an application form to be posted to you.

How many designs can I apply for in one application?

A single design application may be made in respect of:

- one design in relation to one product
- one design that is a common design in relation to more than one product
- more than one design in relation to one product
- more than one design in relation to more than one product, only if each product belongs to the same Locarno Agreement class. Information on the Locarno classes and the classification of different products can be found on the [WIPO website](#).



A single application MUST NOT contain designs from more than one of the above categories. If you file a single application for more than one design, all the designs must meet the official requirements before any can be registered.

The number of designs in the application should be clearly written in the box on the application form.

Indicate the product/s to which the design relates. The rights you obtain through registration will be for the design in relation to the product/s to which the design is registered.

Where either a single design is to be applied to more than one product or more than one design is to be applied to more than one product, the name of each product or products needs to be clearly stated on the application form.

This is so that each product can be classified in accordance with the Locarno Agreement. Where a design is registered or published it will be displayed on the Designs database (ADDs) according to its Locarno class. This makes searching for similar designs much easier.

Representations

Representations are illustrations of the design. They may be drawings, photographs or digital images. Actual samples may be accepted if the design can be easily mounted on a flat surface, and if the sample can be easily stored with other documents.

The representations should show an accurate and complete picture of your design. If you are submitting physical media, please follow these guidelines:

The representations should be printed or mounted on an A4 quality white paper sheet. Only use one side of the sheet and where possible, show the product in an upright position.

Each sheet of representations should be numbered in the bottom right hand corner. You will also need to show the total number of sheets lodged. For example sheet 1 of 3, sheet 2 of 3 and so on.

If the application is for more than one design, a design number or identifier should be written in the top right hand corner of each sheet.

A single sheet cannot be used to show more than one design.

How much does it cost to file an application?

A fee per design is payable when filing your design application.

If you have not paid for all the designs in the application at filing you will be issued with an Invitation to Pay (ITP) for paper applications. Payment will be required up front when the application is lodged online.

A full list of fees can be found on IP Australia's website or by [contacting us](#). (GST does not apply to these statutory fees under the GST Act 1999).

How to pay

File your completed application with the correct fees:

Using eServices

By Visa or MasterCard when you submit your application through [eServices](#) on our website.

For paper applications

By cheque, money-order or credit card (Visa or MasterCard only) using the 'Payment Form for Credit Cards, Cheques and Money Orders' available from [our website](#).

Post the completed form, along with your money-order or cheque, made payable to IP Australia, to:

**IP Australia
PO Box 200
Woden ACT 2606 Australia**

By Electronic Funds Transfer (EFT) by prior arrangement only. To arrange payment please contact **1300 651 010**, and download the EFT form from [our website](#).

Be vigilant – check all letters and invoices

Anyone can access information about your IP right/s, including your contact details, online. Some people may use this information to send letters and invoices to you requesting payment for IP services that you have not requested. They may send you an invoice, or offer to provide a service, such as:

- register or renew your IP right/s for a fee
- publishing your patent or trade mark in an international register
- providing you with monitoring services for your IP right/s.

See our website for a [current list of companies](#) that send these unofficial invoices, and for examples of the invoices they send. The [World Intellectual Property Organization \(WIPO\)](#) website also contains a warning about these companies.

Before paying a fee for any IP-related service, we recommend you carefully consider what, if any, value the service will provide.



Registering your design in other countries

You may wish to register your design in other countries. Timing may be critical, and you will need to decide within six (6) months of filing your application in Australia, if you will apply in other countries. You can find more information on applying to [register a design in other countries](#).

Requesting registration or publication

You must request either registration or publication of each design in your application at filing or do so within six (6) months of the priority date of your application otherwise your application will lapse.

The priority date of your application will generally be the date you file the application, unless you have:

- a claim to priority from an earlier overseas design application
- the design was excluded from an earlier design application in Australia*.

If registration is requested, the design application will be subject to a formalities check to make sure the necessary information and representations are present. If the design application passes the formalities check, the design will be registered and advertised in the Australian Official Journal of Designs and is made available for searching in the designs searching database (ADDS).

The publication option does not give any enforceable design rights but, because the design is published, it prevents others from gaining any rights to the design.

If publication is requested, the application will be checked and the design will be published in the Australian Journal of Designs and on ADDS.



***Designs that are excluded from an earlier application must request registration or publication at lodgement.**



Statement of newness and distinctiveness

The provision of a statement of newness and distinctiveness is optional; however, it can be of benefit because particular attention will be made to the features identified in the statement when assessing the newness and distinctiveness of the design. If you want to

identify particular features of the design/s as new and distinctive it is best to do that at this stage, or at the latest before registration. A statement cannot be added, or amended, once the design is registered.

Maintaining and protecting your design rights

Examination

Registered designs are not automatically examined. Before you can enforce your rights to your design, your registered design must be certified following an examination. To request an examination, you must complete a Request for

Examination either online at time of application (examination is not available online as a separate option) or by downloading the form, and pay the required fee. We will check that your registered design meets all relevant requirements of the Designs Act.

You will then receive one of two possible replies to your request.

- An adverse report - If you receive an adverse report, it will give reasons why your registration, in its present form, does not meet the requirements of the Designs Act. However, you will have an opportunity to make submissions and/or amend the details in your design registration
- A certification - a notice that your design registration has been successfully certified, in which case your rights are then enforceable and certification of your design is advertised in the Australian Official Journal of Designs.

Examination requests from third parties

Other people can request examination of your registered design. They may also provide information relevant to the newness and distinctiveness of your design to be considered by the Registrar in the examination process.

They pay half of the examination fee, and then you must pay the balance of this fee, because if your design is certified, you stand to benefit from this action. Once both parties have paid the appropriate fee, examination will commence. If a third party requests examination and you do not pay the balance, the design registration will cease.



If your registered design is found NOT to be new and distinctive during examination, and you are not able to overcome the objection, your design registration may be revoked after you have had an opportunity to be heard in the matter.

Infringement

If your registered design is infringed upon, or you believe it is being infringed upon, you should consider requesting an examination and/or seeking legal advice. If your registered design is examined and certified, you can then take legal action against the competing party. However, if it is examined and found invalid, your design registration will be ceased and you will not be able to take any action.

Renewal (extension of period of registration)

The initial period of registration for your design lasts for five years from the filing date of your application.

You may choose to renew your design registration for a further five years (to a maximum of ten years). If you do not renew your registration your design will cease.

We send out courtesy renewal reminder notices to your address for service listed on our Designs database (ADDS) two months before the due date of renewal.

Make sure you inform us of any change to your address for service.

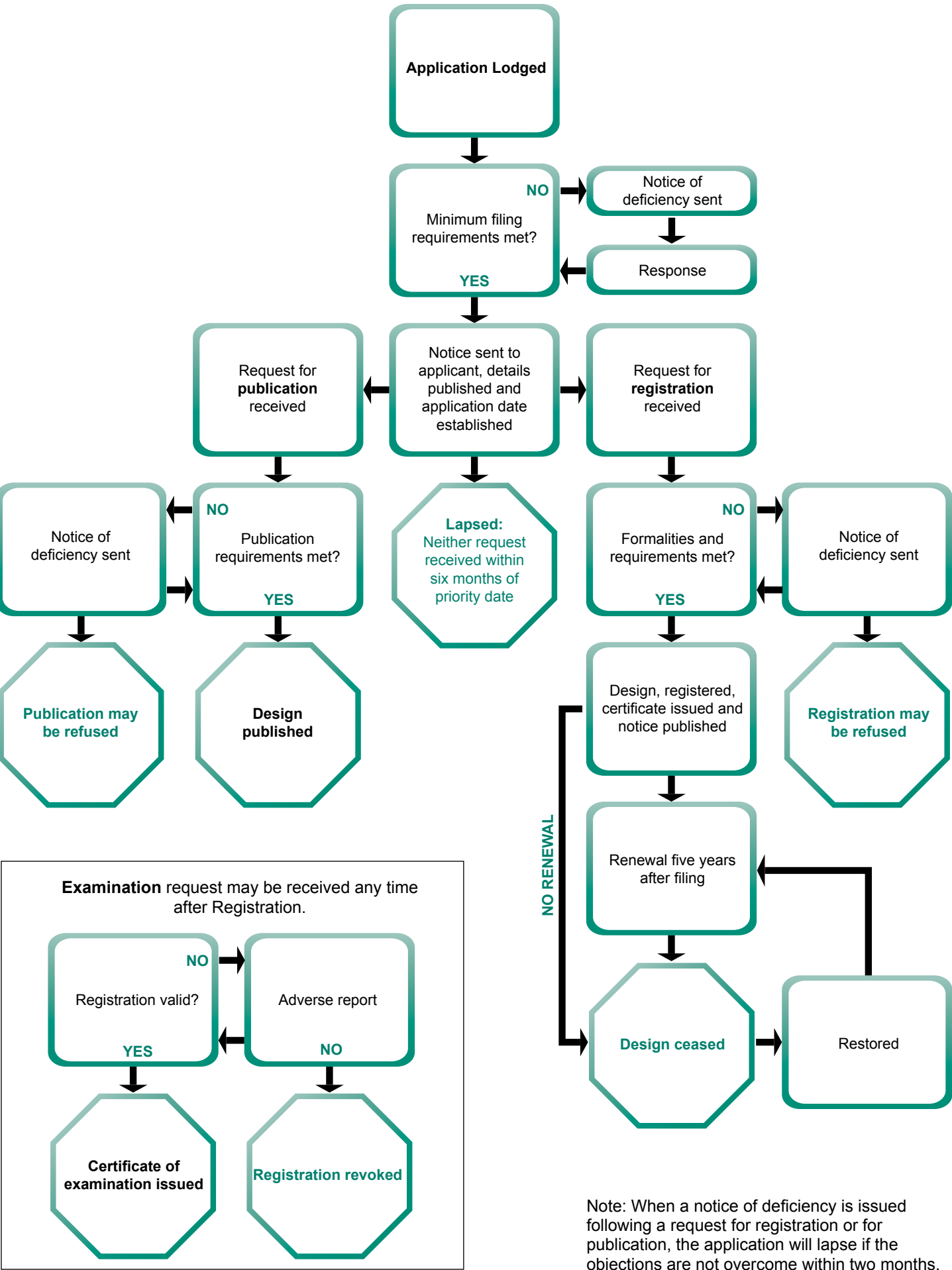
We recommend that you take steps to create your own renewal reminder system, or you may also make arrangements for a patent attorney or other IP professional to keep track of the due dates and forward your payments. This will assist in ensuring your intellectual property rights do not inadvertently cease.

The decision to renew the period of registration is a commercial decision which you are in the best position to make.



A six month grace period for renewal will apply after the first five years of registration. You may renew your registration during the six month grace period however it will incur a fee of \$100 per month from the date renewal is due.

Flowchart of a design application



Note: When a notice of deficiency is issued following a request for registration or for publication, the application will lapse if the objections are not overcome within two months.



Some important points to remember

Points to remember

- Registration gives you the right to use, license and sell your design.
- A design is not enforceable until it has been registered, examined and certified.
- Take care when filing your application. After it is filed, only very limited amendments are allowed to the representations covered by the application.
- Keep a copy of all the documents (including the representations) you file for reference purposes.
- Give each design a reference number or identifier, so you know which one it is.
- Not all designs are registrable.
- Do not assume that your design is registered when the application is filed. Until you receive the Certificate of Registration, you cannot claim that the design is registered.
- If you do not request registration or publication when filing your application – you must do so within six months from your priority date. You should keep a diary or calendar reminder to ensure you do request registration or publication or your application will lapse.
- Note, however, that if your design is registered, the protection given by registration takes effect from the priority date.
- Remember that if you do not renew your registration within the initial five years, your registration will cease.
- Your registered design is personal property and may be licensed, assigned or mortgaged.



Contact us

Our staff will help you and answer your questions, however we cannot assist you on legal matters or provide business advice. You may wish to consult an IP professional or your business adviser. See our website for information about how to contact an IP professional.

We subscribe to the Telephone Interpreter Service. If you need help communicating in English, you can phone the interpreter service on 131 450 for the cost of a local call from anywhere in Australia.

All written correspondence regarding trade marks should be directed to:

Post The Registrar of Designs
IP Australia
PO Box 200,
Woden ACT 2606
Australia

Phone **1300 651 010** (within Australia);
+61 2 6283 2999 (International callers only)

Website www.ipaustralia.gov.au - for comprehensive information relating to intellectual property, to access IP Australia's eServices, and to download publications and other documents

Communicating electronically with us

The date you provide information to us can be critical to the certainty of your IP rights.

We have implemented a set of [Electronic Business Rules](#) that mean that when you communicate with us electronically (e.g. online), using our preferred method, the date and time of that communication will be Australian Eastern Standard/Daylight Saving Time.

Our preferred means of communication is through [eServices](#) - you can register and log in on our website.

We provide these rules to outline the submission requirements for your IP, including:

- identifying the appropriate file formats to submit your service request
- providing a list of electronic payment options.

Privacy of personal information

We are committed to handling personal information in accordance with our obligations under the *Privacy Act 1988*. Our [Privacy Policy](#) explains how we handle personal information, and is available on our website.

Customer service charter

We are committed to providing our customers with excellent customer service and high quality products and services. Our commitments are outlined in our [Customer Service Charter](#), available on our website. We review our charter regularly and measure our compliance each quarter.



Glossary of terms

Address for service in Australia	An address for legal service - an address in Australia where legal documents may be served. This can be a PO Box in Australia. You should notify us if the address changes.
ADDS	Australian Designs Data Searching - our online database of all registered designs from 1985.
AOJD	Australian Official Journal of Designs. The journal issued by IP Australia listing various events concerning designs.
Certification	Certification of your design will occur if, following examination, it meets the requirements of the Designs Act. Once certified you can enforce your registered design.
Classification	All designs filed with the office are assigned one or more classifications (a set of letters and numbers) to simplify searching for earlier similar designs. Designs are classified in accordance with the Locarno Classification System, with a number of added Australian sub-classes. The Locarno Classification consists of 32 classes and 219 subclasses used to classify over 7000 different types of goods.
Distinctive	One of the two criteria for a design to be registrable. A design is distinctive if it is not substantially similar in overall impression to other designs already in the public domain.
Examination	Examination is the process where we check to see if your registered design is new and distinctive. Examination is required before you can commence an infringement action. Any person can request that a registered design be examined.
Infringement	Infringement occurs when someone does anything with your registered design that is your exclusive right without your permission.
ITP	Invitation To Pay – you will be sent an ITP if you file a request and you have not paid the full fee.
New	One of the two criteria for a design to be registrable. A design is new if it is not identical to a design already in the public domain.
Notice of deficiency	This notice details any problems with an application. The application will lapse if the issues identified in the notice are not overcome within two months.

Priority date	The earliest date your design is entitled to, by virtue of having been filed in an IP Office. When considering the newness and distinctiveness of your design, only other designs that are earlier than this date may be considered against it.
Publication	An alternative option to registration. Publication is used to prevent others from obtaining certification for the same or substantially similar design as the design is no longer considered new or distinctive once it has been published. Publication does not provide any exclusive rights to the design.
Registration	If you request registration and your application meets formality requirements, it is registered. The term of registration is initially five years from the date the application was filed (See 'Renewal')
Representation	Representations are drawings, photographs or specimens of your design. Please see the Guidelines on Representations for more information on requirements.
Renewal	The term of registration can be renewed once for a second period of up to five years, up to a maximum of ten.
WIPO	The World Intellectual Property Organization in Geneva, Switzerland.

www.ipaustralia.gov.au

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