



Trade Marks (Means and Form of Filing Documents and Evidence) (Opposition and Other Proceedings) Instrument 2019

I, Frances Roden, Registrar of Trade Marks, make the following instrument.

Dated 14 January 2019

Frances Roden

Frances Roden
Registrar of Trade Marks

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Part 1—Preliminary

1 Name

This instrument is the *Trade Marks (Means and Form of Filing Documents and Evidence) (Opposition and Other Proceedings) Instrument 2019*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	At the same time as Parts 2 and 3 of Schedule 2 to the <i>Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Act 2018</i> . However, the provisions do not commence at all if those parts do not commence.	

Note 1: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

Note 2: Parts 2 and 3 of Schedule 2 to the *Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Act 2018* commence at the same time as Parts 2 and 3 of Schedule 1 to that Act: see item 6 of the table in subsection 2(1) of that Act. Parts 2 and 3 of Schedule 1 to that Act commence on 24 February 2019, unless proclaimed to commence earlier: see item 3 of the table in subsection 2(1) of that Act, after that Act received the Royal Assent on 24 August 2018.

Note 3: On commencement, this instrument will replace the *Trade Marks (Filing Documents and Evidence Opposition) Direction 2014*. That Direction will cease to have effect if Part 3 of Schedule 2 to the *Intellectual Property Laws Amendment (Productivity Commission Part 1 and Other Measures) Regulations 2018* commences. The effect of section 2 of those Regulations is that Part 3 of Schedule 2 to those Regulations commences at the same time as this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following provisions of the Act:

- (a) subsection 213A(1), for the purposes of section 213 of the Act; and
- (b) subsection 213B(1); and
- (c) subsection 213C(1).

4 Definitions

In this instrument:

Act means the *Trade Marks Act 1995*.

Objective Connect means the electronic document management system known as Objective Connect.

Note: IP Australia provides access to Objective Connect.

Regulations means the *Trade Marks Regulations 1995*.

Workspace means a common repository where invited parties have access to upload, view and download documents. It is created and managed by IP Australia. Access is only provided to parties that are participating in a specific proceeding. At the completion of the proceeding, the Workspace is closed.

Note: Workspace was previously called "Share".

Part 2—Means and form for filing documents and evidence

5 Approved means of filing documents (including evidence in the form of a document)

- (1) A document mentioned in subsection (3), or evidence in the form of a document, that may or must be filed under Part 5 or Part 9 of the Act, or Subdivision C, Division 3, or Subdivision D, Division 5, of Part 17A of the Regulations, is to be filed with the Trade Marks Office using:
 - (a) Objective Connect; or
 - (b) if it is not practicable to file the document or evidence using Objective Connect—a means specified by the Registrar in writing.
- (2) A document, or evidence in the form of a document, that may or must be filed under the Act or the Regulations, other than a document mentioned in subsection (3), is to be filed with the Trade Marks Office using:
 - (a) if the Registrar has given the person filing the document or evidence notice that a Workspace has been created for the matter in Objective Connect—Objective Connect; or
 - (b) if a notice has not been given under paragraph (a), or a notice has been given but it is not practicable to file the document or evidence using Objective Connect—a means specified by the Registrar in writing.
- (3) For subsection (1), the documents are the following:
 - (a) evidence in support;
 - (b) evidence in answer;
 - (c) evidence in reply;
 - (d) evidence filed out of time;
 - (e) summary of submissions to be made at an oral hearing;

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- (f) written submissions to be considered in determining a matter;
 - (g) a covering letter for a document mentioned in paragraph (a), (b), (c), (d), (e) or (f), where the document is filed using Objective Connect.
- (4) Objective Connect is not an approved means for filing a document, or evidence in the form of a document, that is not specified in this section.

Note: The means for filing documents other than documents specified in this section is set out in the *Trade Marks (Means and Forms of Filing Documents) Instrument 2019*.

6 Form for filing documents—electronic filing using Objective Connect

- (1) This section sets out the form in which a document, other than a document that is required to be in an approved form, is to be filed using Objective Connect.

Note: The form for filing a document other than a document specified in subsections 5(2) or (3) of this instrument is set out in the *Trade Marks (Means and Form of Filing Documents) Instrument 2019*.

- (2) The document is to be in one or more of the following electronic file formats:
- (a) Portable Document Format (PDF) (.pdf);
 - (b) Text (.txt);
 - (c) Word (.doc, .docx);
 - (d) XML (.xml);
 - (e) TIFF (.tif);
 - (f) PNG (.png);
 - (g) JPEG (.jpeg, .jpg);
 - (h) MP3 (.mp3);
 - (i) MPEG (.mpg, .mpeg).
- (3) The document is to be given a title in the following form:
- (a) for all evidence in support in a single file—“All evidence in support” followed by a brief description of the evidence;
 - (b) for part of the evidence in support—“Part evidence in support” followed by a brief description of the evidence;
 - (c) for the final part of evidence in support—“Balance evidence in support” followed by a brief description of the evidence;
 - (d) for all evidence in answer in a single file—“All evidence in answer” followed by a brief description of the evidence;
 - (e) for part of the evidence in answer—“Part evidence in answer” followed by a brief description of the evidence;
 - (f) for the final part of evidence in answer—“Balance evidence in answer” followed by a brief description of the evidence;
 - (g) for all evidence in reply in a single file—“All evidence in reply” followed by a brief description of the evidence;
 - (h) for part of the evidence in reply—“Part evidence in reply” followed by a brief description of the evidence;
 - (i) for the final part of evidence in reply—“Balance evidence in reply” followed by a brief description of the evidence;

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- (j) for evidence filed out of time—"Additional information" followed by a brief description of the party and a brief description of the contents;
 - (k) for exhibits to declarations—the evidence stage, a brief description of the declaration and the exhibit number(s);
 - (l) for a summary of submissions to be made at a hearing—"Summary of submissions" followed by a brief description of the party filing the summary;
 - (m) for written submissions to be considered in determining a matter—"Written submissions" followed by a brief description of the party filing the summary;
 - (n) for covering letters—"Covering letter" followed by a brief description of the document it accompanies.

Example 1: For paragraph (a), "All evidence in support—Smith with exhibits SS1-SS23 and David with exhibits LD1-LD4".

Example 2: For paragraph (e), "Part evidence in answer—Jones with exhibits TJ1-TJ34".

Example 3: For paragraph (f), "Balance evidence in answer—Lim exhibit CL5".

Example 4: For paragraph (j), "Additional information from opponent—Second declaration of David with exhibit LD5".

Example 5: For paragraph (l), "Summary of submissions—opponent".

Example 6: For paragraph (m), "Written submissions—applicant".

Example 7: For paragraph (n), "Covering letter—Additional information from opponent".

- (4) Subject to subsections (6) and (7), each document mentioned in subsection (3) must be uploaded in a single file.
- (5) Where a document mentioned in subsection (3) contains more than one declaration or exhibit, each declaration and exhibit must be bookmarked.
- (6) Where it is not possible to include an exhibit in the same file as the rest of the document, the exhibit must be filed separately.
- (7) If an electronic file exceeds 1 GB in size:
 - (a) it is to be provided in more than one file, with each file not exceeding 1 GB; and
 - (b) the title for each file is to:
 - (i) be in the form mentioned in subsection (3); and
 - (ii) briefly identify which part of the document is contained in the file:

Example: Part evidence in answer—Jones with exhibits TJ1-TJ34—part 1 of 2.

7 Form for filing evidence describing physical articles

- (1) This section applies to evidence that describes a physical article where that article cannot be filed in the form specified in section 6 of this instrument.
- (2) The evidence is to be in the form of a declaration that:
 - (a) describes the article; and
 - (b) includes a photograph or video recording of the article as an exhibit to the declaration.

Note 1: A declaration must be in the approved form: see regulations 21.1 and 21.6 of the Regulations. Approved forms are available on the IP Australia website.

Note 2: Section 6 sets out additional requirements relating to the form of the evidence if it is a document filed using Objective Connect.

8 Additional requirements relating to the form of documents

- (1) If the total number of pages of documents filed as evidence in a proceeding exceeds 50 (including declarations and exhibits), each document must be clearly paginated and bookmarked in a way that sufficiently identifies the evidence on which the person is relying in the proceeding.
- (2) If a person is required to file, or otherwise files, a document that provides a summary of the evidence on which the person is relying in a proceeding, the document must refer to:
 - (a) the grounds set out in any Statement of Grounds and Particulars that is filed in the proceeding; and
 - (b) relevant page numbers of any documents filed as evidence in the proceeding.

Note: Under the Regulations, the Registrar may give various directions in relation to a proceeding.