



Designs (Documents and Evidence) (Proceedings) Instrument 2019

I, Frances Roden, Registrar of Designs, make the following instrument.

Dated 6 February 2019

A handwritten signature in cursive script that reads 'Frances Roden'.

Frances Roden
Registrar of Designs

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Part 1—Preliminary

1 Name

This instrument is the *Designs (Documents and Evidence) (Proceedings) Instrument 2019*.

2 Commencement

This instrument commences immediately after the commencement of the *Designs (Documents and Evidence) (Proceedings) Instrument 2019* made on 15 January 2019.

3 Authority

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

- (a) subsection 144A(1), for the purposes of section 144 of the Act; and
- (b) subsection 144C(1).

4 Definitions

In this instrument:

Act means the *Designs Act 2003*.

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

Note: IP Australia provides access to Objective Connect.

Regulations means the *Designs Regulations 2004*.

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.”

5 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Part 2—Means and form for filing documents and evidence

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

- (1) A document, or evidence in the form of a document, that may or must be filed under the Act or the Regulations, is to be filed with the Designs Office using:

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- (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.

Note: The Registrar will typically create a Workspace for matters involving two parties, where either party has exercised its right to be heard. This includes, for example, third-party initiated examination of a registered design or an application for revocation of a design on the basis of entitlement.

- (2) Objective Connect is not an approved means for filing a document, or evidence in the form of a document, that is not covered by subsection (1).

Note: The means for filing a document other than a document covered by subsection (1) is set out in the *Designs (Means of Filing Documents) Instrument 2019*.

7 Form for filing evidence—electronic filing using Objective Connect

- (1) This section sets out the form in which evidence in the form of a document is to be filed using Objective Connect.

Note: A document that is not evidence that is filed in electronic form must be in the approved form: see item 7 of Schedule 2 to the Regulations.

- (2) The evidence 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 evidence 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;

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- (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;
 - (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 or declarations—the evidence stage, a brief description of the declaration and the exhibit number(s).

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”.

- (4) Subject to subsections (6) and (7), an item of evidence mentioned in a paragraph in subsection (3) must be filed in a single file.
- (5) Where an item of evidence 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 item of evidence, it 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.”

8 Form for filing evidence in writing

- (1) This section applies to evidence given in writing to the Registrar for the purposes of the Act or Regulations.
- (2) The evidence must be in the form of a declaration.

Note 1: A declaration must be in the approved form: see regulation 11.26 of the Regulations. Approved forms are available on the IP Australia website.

Note 2: Section 7 sets out additional requirements relating to the form of the evidence if it is a document filed using Objective Connect.

9 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 electronic form.

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- (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: A declaration must be in the approved form: see regulation 11.26 of the Regulations.
Approved forms are available on the IP Australia website.

10 Additional requirements relating to the form of evidence

- (1) This section applies to evidence in the form of a document where the total number of pages of evidence filed (including declarations and exhibits) exceeds 50.
- (2) Each item of evidence must be clearly paginated and bookmarked in a way that sufficiently identifies the evidence on which the person is relying in the proceeding.

Schedule 1 – Repeals

Designs (Documents and Evidence) (Proceedings) Instrument 2019 made on 15 January 2019

1 The whole of the instrument

Repeal the instrument

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* has the effect that an instrument made under subsections 144A(1) or 144C(1) of the Act may be revoked.