

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Industry, Science and Technology

Patents Act 1990

Intellectual Property Laws Amendment (PCT Translations and Other Measures) Amendment Regulations 2019

Legislative Authority

The *Patents Act 1990* (the Act) provides for the patenting of inventions in Australia.

Subsection 228(1) of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In particular, paragraph 228(1)(e) of the Act provides that the Governor-General may make regulations for the purpose of carrying out or giving effect to the Patent Cooperation Treaty (PCT).

The Act does not specify any conditions that must be met before the power to make the regulations may be exercised.

The regulations are a legislative instrument for the *Legislation Act 2003*.

Purposes and Operations of the Regulations

The purpose of the *Intellectual Property Laws Amendment (PCT Translations and Other Measures) Amendment Regulations 2019* (the Regulations) is to correct a drafting error in the *Intellectual Property Laws Amendment (PCT Translations and Other Measures) Regulations 2019* (the PCT Translation Regulations).

The PCT Translation Regulations were registered on the Federal Register of Legislation on 25 March 2019. Schedule 1 to the PCT Translation Regulations will commence on 25 September 2019, and will repeal requirements for parties who file a translated patent document with IP Australia to file a certificate of verification of the translation. Among other amendments, item 18 of Schedule 1 to the PCT Translation Regulations will repeal and substitute subparagraph 22.15(3)(b)(ii) of the *Patents Regulations 1991* (the Patents Regulations).

The error to be corrected occurred because the *Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Regulations 2018* repealed and substituted the whole of paragraph 22.15(3)(b) of the Patents Regulations, and moved the relevant part of the regulations relating to certificates of verification into subparagraph 22.15(3)(b)(i). This amendment commenced between the drafting and registration of the PCT Translation Regulations, and was overlooked. As a result the PCT Translation Regulations will, if not corrected amend subparagraph 22.15(3)(b)(ii) of the Patents Regulations, rather than subparagraph 22.15(3)(b)(i) as is now required.

Details of the Regulations are set out in the [Attachment](#).

No consultation undertaken on Regulations

As the Regulations only correct a minor error, no consultation was considered necessary. Consultation on an exposure draft of the PCT Translations Regulations took place between 16 November 2018 to 21 December 2018. Minor changes were made to address unintended consequences identified by stakeholders.

No Regulation Impact Statement required for the Regulations

The Office of Best Practice Regulation (“OBPR”) advised that it does not require a Regulation Impact Statement for the correction made by the Regulations, as they are merely a rectification of a known and obvious error (OBPR reference number: 23560).

Commencement of the Regulations

The Regulations commence the day after the registration of the Regulations on the Federal Register of Legislation. This is to ensure that the correction is made before the commencement of Schedule 1 to the PCT Translations Regulations on 25 September 2019.

ATTACHMENT

Details of the *Intellectual Property Laws Amendment (PCT Translations and Other Measures) Amendment Regulations 2019*

Section 1 – Name

This section identifies the Regulations as the *Intellectual Property Laws Amendment (PCT Translations and Other Measures) Amendment Regulations 2019*.

Section 2 – Commencement

This section provides for the Regulations to commence the day after the registration of the Regulations on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the *Intellectual Property Laws Amendment (PCT Translations and Other Measures) Amendment Regulations 2019* is made under the *Patents Act 1990*.

Section 4 – Schedules

This section provides that 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.

Schedule 1 – Amendments

This Schedule repeals and substitutes item 18 of Schedule 1 to the PCT Translation Regulations to ensure that it does not cause an error in paragraph 22.15(3)(b) of the Patents Regulations.

Intellectual Property Laws Amendment (PCT Translations and Other Measures) Regulations 2019

Item 1

Item 1 repeals and substitutes item 18 of Schedule 1 to the PCT Translation Regulations to ensure that it does not cause an error by repealing and substituting subparagraph 22.15(3)(b)(ii) of the Patents Regulations. Substitute item 18 will now instead amend subparagraph 22.15(3)(b)(i) of the Patents Regulations to omit the phrase “and with a related certificate of verification.”.

The effect is that any person, who in accordance with regulation 22.15 of the Patents Regulations files a patent document translated into English, will no longer be required to file a certificate of verification that the translation is accurate. This implements the original intent of the PCT Translation Regulations.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Intellectual Property Laws Amendment (PCT Translations and Other Measures) Amendment Regulations 2019

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Overview of the Disallowable Legislative Instrument

The *Intellectual Property Laws Amendment (PCT Translations and Other Measures) Amendment Regulations 2019* (the Regulations) corrects a drafting error in the *Intellectual Property Laws Amendment (PCT Translations and Other Measures) Regulations 2019* (the PCT Translation Regulations).

The PCT Translation Regulations will repeal requirements for parties who file a translated patent document with IP Australia to file a certificate of verification of the translation. This will reduce an unnecessary administrative burden for patent applicants.

The PCT Translation Regulations will repeal and substitute subparagraph 22.15(3)(b)(ii) of the Patent Regulations. However, the *Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Regulations 2018* also repealed and substituted paragraph 22.15(3)(b) of the Patents Regulations. This amendment commenced between the drafting and registration of the PCT Translation Regulations, and was overlooked. As a result, the PCT Translation Regulations will amend the incorrect subparagraph of paragraph 22.15(3)(b) of the Patents Regulations, and require the correction made by the Regulations.

Human rights implications

The Disallowable Legislative Instrument does not engage any human rights issues.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because it does not raise any human rights issues.

The Hon Karen Andrews MP, Minister for Industry, Science and Technology