

INTA Comments to Public Consultation on the Australia's Draft Designs (Formal Requirements for Designs Documents) Instrument 2022

The International Trademark Association (INTA) appreciates and would like to thank IP Australia for the opportunity to contribute to the public consultation regarding the draft Designs (Formal Requirements for Designs Documents) Instrument 2022.

INTA has adopted Model Design Law Guidelines and Guidelines for Examination of Industrial Designs, which contain INTA's basic positions on design law and practice and serve as a baseline standard by which INTA analyses and comments on national and regional design laws, regulations, and the practices of IP offices. With a basis on particularly the Guidelines for Examination of Industrial Designs, below INTA's Designs Committee has reviewed the draft Designs (Formal Requirements for Designs Documents) Instrument 2022.

General Comments

The proposed provisions of the Instrument are in line with INTA's position as set out in its Model Design Guidelines for Examination of Industrial Designs. INTA accordingly welcomes implementation of the Instrument.

Observations on sections 7 and 8 of the Draft Instrument.

Below follows general comments for consideration by IP Australia:

Relevant provision:

7. Photographs in representations.

- (1) Representations being photographs must be clear.
- (2) All representations being photographs, including photographs of specimens must be photographs taken against a neutral and contrasting background.
- (3) Photographs in a physical printed format must be: (a) printed on material that allows and facilitates any number of copies of the photograph to be reproduced directly by photocopying, digital scanning and photography; and (b) not be folded, creased or cracked.

INTA Comments:

Section 7(1): It is submitted that term "clear" potentially could be clarified by the addition of the words "and in focus". In the context of photography it is submitted that the term "clear" has no technical meaning.

Section 7(2): It appears that there should be a comma after the word "specimen". The term "neutral" may not have the desired clarity. It is submitted that the term "plain" could be used in addition to or instead of the term "neutral". Additionally, it is submitted that the language "contrasting background" may be unclear. It is submitted that it may be better to use language such as "background contrasting to the subject of the photograph".

Section 7(3): This section may be made clearer by moving the words "printed on material" from subsection (a) to the end of the first sentence immediately prior to the colon and adding "or having the image surface impaired in any other way" to the end of subsection (b).

Relevant provision

8. Text.

- (1) All text, other than that which forms part of the design, appearing in any document must be: (a) in English; (b) legible; and (c) indelible.
- (2) A representation must not include text which is descriptive, other than any word or words necessary for the labelling and understanding of the nature of the representation (e.g. 'Perspective View', 'Top View', 'Left-Side View' and 'Right-Side View' etc.).
- (3) A representation must not contain a statement of newness and distinctiveness, or wording to the effect of a statement of newness and distinctiveness.
- (4) Where not already obvious on a fair reading, the representations in a design application must include appropriate labelling for representations, **such as** the following labels: (a) 'exploded view'; (b) 'partial view'; (c) 'close-up view'; (d) 'environmental view' or 'reference view'; and (e) 'sectional view' or 'cross-sectional view'.

INTA Comments

Section 8(4): The language "such as the" might be clearer or at least mitigate against any practice requiring use of the specific language if modified to read "such as, but not limited to, the".

About INTA

The International Trademark Association (INTA) is a global association of brand owners and professionals dedicated to supporting trademarks and related intellectual property (IP) to foster consumer trust, economic growth, and innovation. Members include nearly 6,500 organizations, representing more than 34,350 individuals (trademark owners, professionals, and academics) from 185 countries, who benefit from the Association's global trademark resources, policy development, education and training, and international network. Founded in 1878, INTA, a not-for-profit organization, is headquartered in New York City, with offices in Brussels, Santiago, Beijing, Singapore, and Washington, D.C., and a representative in New Delhi. For more information, visit inta.org.

INTA stands ready to support IP Australia in its efforts towards reviewing the Designs System. Should you wish to further discuss the matter or additional issues, please contact Seth Hays, INTA Chief Representative Officer, Asia-Pacific, at shays@inta.org or Erica Vaccarello, Advisor – External Relations, at evaccarello@inta.org.