



Designs (Means and Form of Filing Documents) Instrument 2022

I, Paula Adamson, Registrar of Designs, make the following instrument.

Dated

Paula Adamson **DRAFT ONLY—NOT FOR SIGNATURE**
Registrar of Designs

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Schedule 1—Repeals

Designs (Means of Filing Documents) Determination 2019 made on 15 January 2019.

Part 1 – Preliminary

1 Name

This instrument is the *Designs (Means and Form of Filing Documents) Instrument 2022*.

2 Commencement

This instrument commences at the same time as Schedule 6 of the *Designs Amendment (Advisory Council on Intellectual Property Response) Act 2021*.

3 Authority

This determination is made under the *Designs Act 2003*.

4 Application of instrument

This instrument does not apply to evidence outlined in section 7 of the *Designs (Document and Evidence) (Proceedings) Instrument 2019*.

Note 1: The *Designs (Document and Evidence) (Proceedings) Instrument 2019* determines the means for filing documents and evidence for proceedings in relation to designs.

5 Definitions

In this determination:

Act means the *Designs Act 2003*.

ALS (short for Alternative Lodgement Service) means the backup function accessible from IP Australia’s website that can be invoked during outages of the digital lodgement systems.

API system (short for Application Programming Interface system) means any transactional interface, application, mobile application, website or the like that utilises an application programming interface provided by IP Australia.

B2B (short for Business to Business) means the electronic channel known as B2B maintained by IP Australia.

Design has the same meaning as in section 5 of the Act.

Application means an application filed under section 21 of the Act.

Digital lodgement systems means any website, mobile application or other similar system provided by IP Australia to lodge transactions.

EFS (short for Emergency Facsimile Service) means the facsimile service that is provided by IP Australia when digital lodgement systems and alternative lodgement services are unavailable due to planned or unplanned outage.

IP Lodgement Counter means a facility provided by IP Australia for the processing of transactions in person.

Regulations means the Designs Regulations 2004.

Representation means the definition provided in section 5 of the Act.

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

7 Filing using electronic means

- (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 electronic means, other than EFS.
- (2) The document is to be in one of the following electronic file formats:
 - (a) PDF (.pdf);
 - (b) Text (.text);
 - (c) Word (.doc, .docx);
 - (d) XML (.xml);
 - (e) TIFF (.tif, tiff);
 - (f) PNG (.png);
 - (g) JPEG (.jpeg, .jpg);
 - (h) MP3 (.mp3);
 - (i) MPEG (.mpg, .mpeg).

Note: Approved forms are available on IP Australia's website at <http://www.ipaustralia.gov.au> or on the relevant digital lodgement system.

- (3) Documents filed in MP3 or MPEG format must not form part of the representations.

8 Filing using other means

- (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 other means.
- (2) The document is to be filed in one or more of the following formats:
 - (a) hard copy document;
 - (b) electronic file on the following physical media:
 - i. Compact disc (CD).
 - ii. Digital Versatile Disc (DVD).
- (3) If a document is filed as an electronic file on physical media, the electronic file is to be in one of the electronic file formats listed in section 6.
- (4) If a document is an electronic file on physical media, the physical media must be enclosed in a hard case and accompanied by a transmittal letter on paper. The transmittal letter must list:
 - (a) the operating system compatibility (e.g. Windows, iOS, Linux);
 - (b) the files contained on the physical media including, for each file, the file name, the file size in bytes, and date of creation.
- (5) Physical media must be labelled with the following information:

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- (a) the name of the sender;
 - (b) the name of the product;
 - (c) any relevant reference number;
 - (d) creation date of the physical media;
 - (e) the order of the media if the document extends over multiple media (e.g. CD 1 of 2);
 - (f) an indication of copy submission if more than one copy is filed (e.g. Copy 1 of 2).

Part 3 – Means for filing documents

9 Approved means of filing documents

(1) A document must be filed with the Designs Office using:

- (a) the electronic means mentioned in subsection (2); or
- (b) the other means mentioned in subsection (3).

(2) For paragraph (1)(a), the electronic means are:

- (a) Digital lodgment systems;
- (b) an API system;
- (c) ALS;
- (d) ES, if no other electronic means specified in this instrument is available.

Note: For a document (including any attachments) filed with the Designs Office using electronic means, the time of receipt of the document is the time in Canberra, ACT (Australian Eastern Standard/Daylight Time) when the entirety of the document is capable of being retrieved from IP Australia's information system: see section 14A of the *Electronic Transactions Act 1999*. Users should note that the time of receipt may be different to the time in the user's location.

(3) For paragraph (1)(b), the other means are:

- (a) Post;
- (b) Delivery in person to the IP Lodgement Counter;

Note 1: At the time this instrument commenced, the post address of the Designs Office was PO Box 200, Woden, ACT 2606.

Note 2: Section 29 of the *Acts Interpretation Act 1901* will govern when filing a document with the Designs Office by post is taken to be affected.

10 Preferred means of filing documents

(1) The preferred means for filing a document with the Designs Office are:

- (a) digital lodgment systems; or
- (b) an API system; or
- (a) B2B.

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- (2) If a person is attempting to file a document with the Designs Office by a means specified in subsection (1), and the person is unable to do so due to maintenance, the preferred means of filing a document is by ALS.
- (3) For the purposes of (2), if ALS is unavailable due to a planned or unplanned outage, the preferred means of filing a document is by EFS.
- (4) Where subsection (3) applies, the person must also complete and file a Declaration for use of Emergency Fax form.

Note 1: At the time this determination commenced, the Declaration for use of Emergency Fax form was available on IP Australia's website at <http://www.ipaustralia.gov.au>.

Note 2: Under the Regulations, reduced fees may be payable for filing a document by preferred means.

Schedule 1—Repeals

Designs (Means of Filing Documents) Determination 2019 made on 15 January 2019.

1 The whole of the instrument

Repeal the instrument

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