Australian Government
IP Australia

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Response to public consultation

Computer Implemented Inventions
IP Australia Patent Manual of Practice and Procedure Update - July 2026

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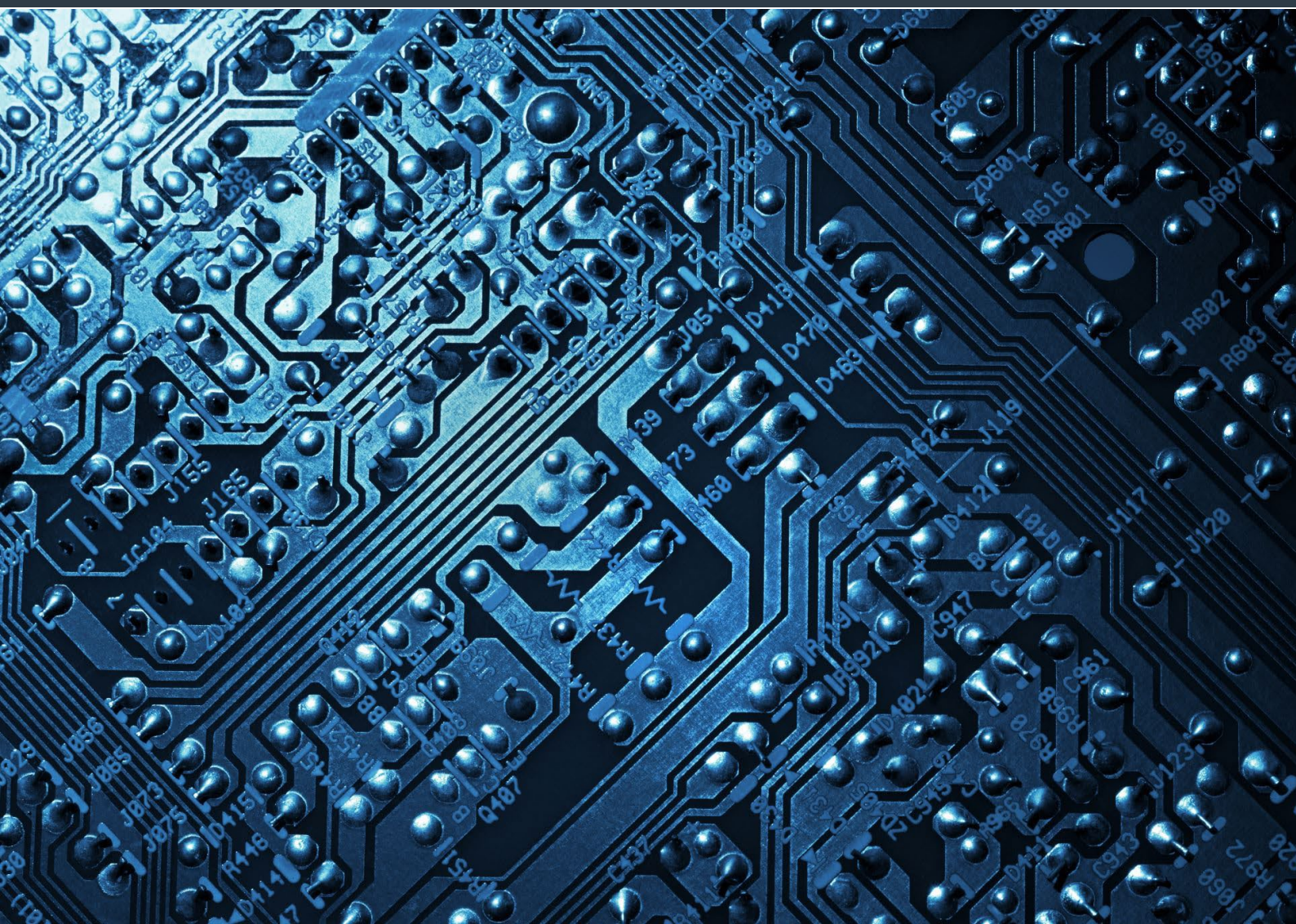

Following the High Court refusal of special leave to appeal in the matter of *Aristocrat Technologies Australia Pty Ltd v Commissioner of Patents [2025] FCAFC 131* (*Aristocrat 25*), IP Australia comprehensively reviewed and updated its Patent Manual of Practice and Procedure (the Manual) on 16 March 2026 to reflect the decision of the Full Federal Court.

Given the level of interest in this decision and our practice, we undertook an additional public consultation to ensure transparency and greater opportunities for stakeholders to provide feedback. We received and considered 11 submissions and made changes to the Manual, which were published on 3 July 2026. Key themes that we have sought to address are set out below.

We thank everyone who engaged with this consultation process and those who made submissions.

Key themes

Language pointing to the need for a "relevant artificial effect", and that "something more" than effects such as changes in computer memory are required.

Some submissions noted that the concept and language of a "relevant" artificial effect contained in the updated version published 16 March 2026 does not appear in the case law. These submissions likewise argued that the phrase "something more is required" lacks a basis in authority.

The 16 March 2026 version of the Manual referred to these concepts as representing the Full Federal Court's findings in *Research Affiliates LLC v Commissioner of Patents* [2014] FCAFC 150 *(Research Affiliates)*. The Full Federal Court said that while there would be physical effects present in the transformation of data and use of computer memory when a computer is programmed in a certain way, and while a computer itself is a physical product, treating those physical elements as satisfying the requirement for an artificial effect would involve a "mechanistic application" of that criterion that was not based on the substance of the invention.

We have removed references to this specific language and more directly reference the dichotomy in [131] of *Aristocrat 25*. We still consider that requiring more than mere computer implementation is fundamental to assessing the patentability of computer implemented inventions. This is because a computer implemented method may be claimed to include an artificial effect, yet the courts do not accept that otherwise unpatentable methods become patentable merely because they are claimed as computer implemented.

Suggestion that it is not appropriate to refer to earlier Full Court reasoning

Some submissions criticise the way in which the Manual turns to earlier Federal Court decisions as examples of patentable or unpatentable inventions and draws out factors that could be said to have contributed to that result. Some submissions argue that these earlier decisions should fundamentally not be relied upon at all, as it is the 'result' of particular cases which *Aristocrat 25* confirms as correct and not any of the reasoning.

We consider that previous Full Court decisions remain relevant to assessing whether there is patentable subject matter. However, we have updated relevant parts of the Manual to ensure that

examiners apply caution to the reasoning expressed in each of the earlier Full Court decisions, and to retain focus on the formulation advanced by *Aristocrat 25*.

We consider that the key criticism in *Aristocrat 25* is that one must avoid taking '*too rigid and narrow an approach'* (at [131]). We understand this is because previous decisions may have found a lack of patentability where the invention involved implementation of an idea in a computer using conventional computer technology for its well-known and well-understood functions. The previous *Aristocrat* Full Court asked whether the claimed invention can *'broadly be described as an advance in computer technology'*, however the Full Court has made clear in *Aristocrat 25* that none of the prior authorities should be interpreted as requiring that there be an *'advance in computer technology'* for there to be patentable subject matter for a computer implemented invention.

Consideration of physical features with respect to common general knowledge

Some submissions expressed concern that the section which considers physical features of the invention involves a comparison to common general knowledge (CGK). Those submissions suggest this involves elements of consideration inconsistent with the *Aristocrat 25* decision in 'filleting' features from the claims.

We have made changes to the Manual to clarify the scope of what this step is intended to achieve. The step provides a preliminary pathway to more readily support patentability. It is directed to considering physical features and assessing whether the invention is directed to an alleged new physical computerised product or system as such (in which case it may be accepted as involving patentable subject matter without a need to consider the kinds of issues Courts have laboured on when assessing patentability of computer implemented inventions). Importantly, if further analysis is required, examiners are to conduct that analysis in context of all of the integers of the claim and how those integers interoperate.

The reason for excluding certain subject matter from patentability for computer-implemented inventions is to avoid granting a patent monopoly for subject matter that is, in substance, an unpatentable method or scheme. Conversely, there should be patentable subject matter if what is being claimed includes physical integers that contribute some relevant point of difference with the common general knowledge, because it will follow that what is claimed is not, in substance, to an unpatentable method. This part of the analysis in the Manual is directed to determining whether the considerations unique to characterising the claimed computer implemented inventions need to be assessed at all.

Patentability is a low threshold, and computer implemented inventions do not require unique consideration

Some submissions refer to the broad idea that patentability is a low threshold and should be treated as such, suggesting the Manual sets too high a bar. Some submissions also make the point that computer implemented inventions should not be considered as special subject matter warranting special treatment.

We have not made changes to the manual in relation to these specific issues. However, we have made changes which clarify that the previously published guidance is not to be read as suggestive of minimum requirements but as helping support patentability.

The Full Court in *Aristocrat 25*, and all members of the High Court in the Aristocrat litigation, recognise that computer implemented inventions require unique consideration. If that were not the case, the invention in the Aristocrat matter being to a machine, would self-evidently involve patentable subject matter. Claims to computer-implemented inventions are treated differently to achieve coherence in the law of manner of manufacture, by not allowing unpatentable methods and schemes to be monopolised merely because they are deployed in a computer. In this regard, the threshold for patentability of computer-implemented inventions is defined by those relevant principles.

Other changes made after consideration of submissions

Based on our consideration of the submissions, we have made other key changes to the Manual including:

- removing reference to 'identification of the substance of the invention' to instead refer to the need to 'characterise the invention as a matter of substance' (to ensure examiners avoid identifying subsets of claimed features in the characterisation exercise);
- additions to remind examiners to consider matters on the balance of probabilities.
- revising the list of examples at the end of the relevant section to increase focus on the series of Federal Court cases and the decision-making framework. We aim to work with stakeholders over time to incorporate new examples where it may assist.

IP Australia also notes Australia's obligations under international agreements, including the World Trade Organization Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) and various World Intellectual Property Organization agreements. We take these obligations into account when reviewing our law and practise.

We remain open to continued feedback through our stakeholder channels and will continue to work to improve the guidance and examples that are provided in the Manual.

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