



Australian Government

IP Australia

03 March 2026

# Response to public consultation

Trade Marks Amendment (International Registrations, Hearings and Oppositions) Regulations 2025



# Introduction

In September 2025, IP Australia sought feedback on an exposure draft of *Trade Marks Amendment (International Registrations, Hearings and Oppositions) Regulations 2025*.

These regulations proposed amendments to the *Trade Marks Regulations 1995* to make them more user-friendly and consistent with international requirements. This included updating Australia's trade marks system in line with international regulations under [the Madrid System](#).

We received two submissions, one of which is confidential. The non-confidential submission has been published in full on our Consultation Hub. Below we provide a summary of submissions, IP Australia's response and outcomes.

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

## Summary of Submissions and IP Australia's Response

### Schedule 1 – Increased Period for Filing Notice of Intention to Defend

The proposal was to increase the timeframe for filing a Notice of Intention to Defend from one to 2 months, to align with changes to the international regulations under the Madrid System (the Madrid Regulations). Both submissions supported making this change across opposition types, and for both national applications and international registrations designating Australia (IRDAs), in the interests of consistency and preventing confusion.

Submissions emphasised that IP Australia should clearly highlight this change in correspondence.

#### IP Australia's response:

IP Australia has proceeded with the amendments as provided in the exposure draft.

IP Australia agrees that the changed timeframe should be clearly reflected in relevant correspondence and has done so in all relevant matters.

## Schedule 2 – Relationship between Registered Trade Marks and Protected International Trade Marks (Partial Replacement)

The proposal was to permit partial replacement of an Australian trade mark registration by a protected international trade mark, to align with changes to the Madrid Regulations. Submissions raised no concerns with the introduction of partial replacement and the changes proposed in this Schedule.

### IP Australia's response:

IP Australia has proceeded with the amendments as provided in the exposure draft.

## Schedule 3 – Rejecting IRDA on Basis of Sanctions Regime

The proposal was to provide specific grounds to refuse protection of an IRDA, if protecting it would contravene Australia's sanctions laws. This would enable similar outcomes for IRDAs as for national applications. Submissions raised no concerns with the proposed amendments and it was acknowledged that this aligns the treatment of IRDAs with national applications.

### IP Australia's response:

IP Australia has proceeded with the amendments as provided in the exposure draft.

## Schedule 4 – Registrar's Power to Revoke Acceptance of IRDA

The proposal was to provide a clear power for the Registrar to revoke the acceptance of IRDAs in certain situations. This would clarify the status of IRDA revocations and ensure consistency between IRDAs and national applications. Submissions raised no concerns with the proposed amendments. It was acknowledged that this aligns the treatment of IRDAs with national applications.

### IP Australia's response:

IP Australia has proceeded with the amendments as provided in the exposure draft.

# Schedule 5 – Dealing with Opposition to Trade Mark Applications or Removal of Trade Mark for Non-Use

The proposal was to give the Registrar the power to finalise opposition matters that are not progressing because the parties have disengaged from formal processes. This would address the issue of oppositions which are unresolved ('in limbo') due to non-payment of decision fees.

This Schedule attracted the most substantive feedback. Submissions acknowledged the need to address the issue, but raised concerns with the proposed solution, including in relation to the following:

- Suggestion to revert to previous fee arrangements – Submitters noted that the issue arises within the context of IP Australia moving away from issuing decisions on the written record without requiring fees. One submission expressed a preference for addressing the issue by reverting to the previous practice of IP Australia issuing decisions on the written record where no fees are paid.
- Outcome when the non-initiating party pays the fee – One submission preferred that the matter proceed to a decision or hearing if fees are paid by either party, as is currently the case. They submitted that there are reasons why a party might want a matter to be decided even if the 'default' outcome would be in favour of that party.
- Outcome in oppositions to registration – Submissions agreed with the consultation paper that the opponent bears the main responsibility to progress an opposition. However, one submission raised concerns that there are already significant imbalances in what is asked of an opponent compared to an applicant for registration.
- Outcome in oppositions to removal for non-use – One submission considered it too simplistic to expect the non-use applicant to keep the matter moving, although the other agreed that this would be appropriate in cases where neither party pays the relevant fees. Submissions noted that there is also a public interest in unused trade marks being removed from the Register.
- Alternatives and mitigations – To mitigate the potential for disproportionate burden, one submission suggested alternatives, including bringing fees forward earlier in the opposition process to cover later decision costs. Another suggestion was to make fees a shared responsibility by introducing consequences for *both* parties if they do not pay. If the initiating party pays and the other does not, the decision would be decided in favour of the party who has paid (or at least the other party should not be entitled to costs in their favour).
- Discretion and length of time before finalisation – Submissions stressed the need for guidance and procedural fairness in the exercise of the power and questioned whether a 3-month period before finalisation is sufficient.
- Application to existing matters – Submissions raised concerns about the application of new provisions to existing matters and requested clarification about which application provision would apply to certain matters.

## IP Australia's response:

IP Australia has removed this proposal from the *Trade Marks Amendment (International Registrations, Hearings and Oppositions) Regulations 2025* package to further consider the feedback and to ensure an approach that supports the intended policy outcomes.

IP Australia notes the general support for resolving 'in limbo' matters and remains committed to resolving this issue. We have considered the submissions carefully and will soon consult on an updated proposal. We have addressed specific feedback below.

Suggestion to revert to previous fee arrangements – IP Australia considers that any solution would need to fit within the existing fee structure for oppositions, which was developed through extensive consultation. We do not consider it appropriate to return to previous practices of issuing decisions without requiring fees. The fee for requesting a final decision was introduced to cover the costs involved in making and issuing a decision. Making written decisions without requiring fees means that those who pay decision fees are effectively cross-subsidising those who do not.

Outcome when the non-initiating party pays the fee – IP Australia agrees with the submission that payment of the relevant fee by *either* party should be sufficient. The Registrar should be expected to hold the hearing or make the decision, no matter which party pays the fee, and even if the other party does not. We will consider refining the draft amendments to make this clear.

Outcome in oppositions to registration – IP Australia considers that the requirement for an opponent to registration to pay more fees than an applicant is reasonable and consistent with standard legal principles that the moving party bears the onus of prosecuting the proceeding to its conclusion. The Notice of Intention to Defend was introduced to mitigate concerns around applicants who fail to participate in the process.<sup>1</sup> Opposition fees may be recoverable should the opponent succeed.

Outcome in oppositions to removal for non-use – IP Australia remains of the view that where an opposition to removal reaches the final stage but the matter is not progressing (and therefore cannot be decided), the non-use action should fail, maintaining the state of the Register prior to the non-use application. By this stage, the opponent has actively engaged in the process by providing evidence of use of the trade mark. Removing a trade mark in the face of this evidence runs counter to the assumption inherent in subsection 101(1) that the Registrar must be satisfied that the grounds on which the application was made have been established.

We accept that the onus is borne by different parties at different stages of the non-use process. However, the courts have consistently recognised that the removal applicant is ultimately the substantive moving party.<sup>2</sup> When removal for non-use has been opposed, it is expected that this party will prosecute the case.

<sup>1</sup> See Explanatory Memorandum to the Intellectual Property Laws Amendment (Raising the Bar) Bill 2011.

<sup>2</sup> *Hungry Spirit Pty Limited ATF The Hungry Spirit Trust v Fit n Fast Australia Pty Ltd* [2020] FCA 883.

Alternatives and mitigations – We think that these proposed mitigations would add undue burden and administrative complexity. We do not consider it appropriate to increase fees earlier in the opposition process to cover the later costs of making a decision as this would penalise parties who are able to resolve their issues and withdraw from procedures without a decision needing to be made.

We also do not think it is appropriate to attach outcomes based on which party has paid fees. Providing a ‘default’ outcome if neither party pays and the matter is finalised is different to determining the outcome based on which party is willing to pay.

Discretion and length of time before finalisation – IP Australia will develop guidance to ensure stakeholders have clarity as to how the proposal would operate. The intention is that the power would not be exercised if there is genuine engagement from the parties. Parties will be given ample opportunities to signal their engagement and prevent exercise of the power.

Given this, we think the minimum 3-month period before finalisation becomes available is sufficient. Currently, it is expected that a request for a hearing is made within one month of parties being notified of the end of the evidence stages. Three months is comparable to timeframes for more time-consuming steps in oppositions, such as the timeframe to provide evidence in support (3 months) and evidence in reply (2 months). A minimum timeframe that is too long would allow matters to linger inappropriately. Keeping oppositions moving in a timely manner benefits all stakeholders and was a key objective of the ‘Raising the Bar’ reforms.<sup>3</sup>

Application to existing matters – We think it is appropriate for the change to apply to existing matters in ‘limbo’. The change has been proposed to clear a backlog of unresolved matters that has accumulated since the fee structure was changed, as well as to prevent recurrence.

We acknowledge that some stakeholders may expect that these matters would be decided as they were under the previous fee arrangements. We agree that parties whose matters are currently ‘in limbo’ should receive clear and direct communication, including a renewed notice period and explicit warnings about the consequences of not paying the relevant fees.

We confirm that new regulation 22.36 would apply to matters where, prior to commencement, the Registrar has already issued a notification that all evidence has been filed (or that no evidence has been filed). New regulation 22.35 would apply where this notification is made on or after commencement.

<sup>3</sup> ‘Raising the Bar’ included reforms directed to reducing delays in the resolution of patent and trade mark applications by tightening opposition procedures. This included introducing a cooling-off period with set time limits, to enable negotiations after opposition proceedings have commenced but ensure these are concluded in a timely manner. See [Explanatory Memorandum](#) to the Intellectual Property Laws Amendment (Raising the Bar) Bill 2011 and [Explanatory Memorandum](#) to the *Intellectual Property Legislation Amendment (Raising the Bar) Regulation 2013 (No. 1)*.

## Schedule 6 – Extending Period for Examining Trade Mark Application Where a Hearing is Requested

The proposal was to allow deferment of the time limit for acceptance of a trade mark, if a hearing is requested. Submissions welcomed the proposed amendments which address a long-standing issue.

Both submissions suggested that this Schedule should apply retrospectively, so that trade mark applications already awaiting a hearing could access the new ground for deferment.

### IP Australia's response:

IP Australia has proceeded with the amendments as provided in the exposure draft.

IP Australia considered the submissions on the potential benefits of making this Schedule apply retrospectively but ultimately chose to keep the application provisions as drafted. Retrospective application provisions require a high degree of justification and there would be little tangible benefit to customers to make the Schedule apply retrospectively. This is because at any given time there are very few applications awaiting a hearing and close to the time limit for acceptance. Any such trade marks would have been accommodated by the extension of time practices that were already in place.

## Schedule 7 – Technical Amendments

The proposal was to make two minor technical terminology changes to clarify the operation of certain provisions, without changing that operation. Submissions raised no concerns with the proposed amendments.

### IP Australia's response:

IP Australia has proceeded with the amendments as provided in the exposure draft.

## Schedule 8 – Application provisions

The submissions did not raise concerns beyond what was raised in relation to Schedules 5 and 6 above.

### IP Australia's response:

IP Australia has proceeded with the application provisions as provided in the exposure draft, other than those related to the removed Schedule 5.

# Outcomes

The *Trade Marks Amendment (International Registrations, Hearings and Oppositions) Regulations 2025* were made on 13 November 2025. More details are available in IP Australia's official notice published 17 November 2025 [here](#).

The final Regulations largely reflect the text of the exposure draft, with the exception of the proposed Schedule 5 – Dealing with Opposition to Trade Mark Applications or Removal. This item was removed for further consideration and consultation. Subsequent schedules were renumbered as a result of that removal.

Regarding the removed proposal, we have considered the input from stakeholders to further develop this proposal. We are releasing a follow-up consultation paper. We remain committed to addressing the 'in limbo' matters.

# Conclusion

IP Australia appreciates the constructive feedback provided through this process and your help to ensure that these and future regulation changes continue to improve the Australian trade marks system.