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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT (16/01/2014)

Intellectual Property Laws Amendment Bill 2014

No. , 2014

(Industry)

A Bill for an Act to amend legislation relating to intellectual property, and for related purposes

Contents

EXPOSURE DRAFT

A Bill for an Act to amend legislation relating to intellectual property, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Intellectual Property Laws Amendment Act 2014*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	The start of the day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	
3. Schedule 2	The later of: (a) immediately after the start of the day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent; and (b) immediately after Article 31bis of the Agreement on Trade-Related Aspects of Intellectual Property Rights set out in Annex 1C to the Marrakesh Agreement	

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
	Establishing the World Trade Organization, done at Marrakesh on 15 April 1994, comes into force for Australia. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur. The Minister administering the *Patents Act 1990* must announce by notice in the Gazette the day the event mentioned in paragraph (b) occurs.	
4. Schedule 3	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	
5. Schedule 4	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 24 months beginning on the day this Act receives the Royal Assent, the provision(s) are repealed on the day after the end of that period.	
6. Schedule 5, Part 1	The day after this Act receives the Royal Assent.	
7. Schedule 5, item 6	Immediately after the commencement of item 32 of Schedule 6 to the *Intellectual Property Laws Amendment (Raising the Bar) Act 2012*.	15 April 2013
8. Schedule 5, items 7 to 15	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
9. Schedule 5, item 16	Immediately after the commencement of item 32 of Schedule 6 to the *Intellectual Property Laws Amendment (Raising the Bar) Act 2012*.	15 April 2013

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
10. Schedule 5, items 17 to 19	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
11. Schedule 5, item 20	The day this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—TRIPS Protocol interim waiver

Part 1—Amendments

Patents Act 1990

1 Section 3 (list of definitions)

Omit "compulsory licence".

2 Section 3 (list of definitions)

Insert "eligible importing country".

3 Section 3 (list of definitions)

Insert "patented pharmaceutical invention".

4 Section 3 (list of definitions)

Insert "pharmaceutical product".

5 Section 3 (list of definitions)

Insert "PPI".

6 Section 3 (list of definitions)

Insert "PPI compulsory licence".

7 Section 3 (list of definitions)

Insert "PPI order".

8 Section 3 (list of definitions)

Insert "PPI order applicant".

9 Section 3 (list of definitions)

Insert "TRIPS Agreement".

10 Section 3 (list of definitions)

Insert "WTO General Council decision of 30 August 2003".

11 Before subsection 70(5)

Insert:

*Meaning of **first regulatory approval date***

12 After subsection 70(5)

Insert:

(5A) For the purposes of paragraph (5)(a), disregard an inclusion in the Australian Register of Therapeutic Goods of goods that contain, or consist of, a pharmaceutical substance if the inclusion was sought for the sole purpose of exporting the goods from Australia to address a public health problem in an eligible importing country:

(a) in circumstances of national emergency or other circumstances of extreme urgency; or

(b) by the public non-commercial use of the goods.

Note: This subsection also applies in relation to an application for an extension of the term of a standard patent (see paragraph 71(2)(b)).

*Meaning of **pre-TGA marketing approval***

13 At the end of paragraph 71(2)(b)

Add ", as worked out under subsection 70(5A) (if applicable)".

14 Before section 133

Insert:

Part 1—Introduction

132A Simplified outline of this Chapter

This Chapter provides for court orders requiring the grant of compulsory licences in respect of patented inventions.

Special provision is made for compulsory licences to exploit patented pharmaceutical inventions. This is to enable the manufacture of a pharmaceutical product in Australia for export to

an eligible importing country, to address public health problems in that country.

This Chapter also provides generally for the surrender of patents, and for court orders revoking patents.

Part 2—Compulsory licences (general)

132B Simplified outline of this Part

The Federal Court may make an order under this Part requiring the grant of a compulsory licence to work a patented invention.

The court may order a compulsory licence to be granted if the reasonable requirements of the public are not being met with respect to a patented invention.

The reasonable requirements of the public relate, broadly speaking, to whether Australian trade or industry is unreasonably affected by the actions of the patentee in relation to the manufacture or licensing of the invention (or the carrying on of a patented process).

The court may also order a compulsory licence to be granted if the patentee has engaged in restrictive trade practices in connection with the patent under the *Competition and Consumer Act 2010* or under an application law (within the meaning of that Act).

The court may order a patent to be revoked after an order for a compulsory licence has been made (on the same grounds that apply to an order for a compulsory licence).

The patentee must be paid an agreed amount of remuneration, or an amount of remuneration determined by the court.

15 Section 133 (heading)

Repeal the heading, substitute:

133 Compulsory licences—general

16 At the end of subsection 133(1)

Add:

Note: For compulsory licences for the manufacture and export of patented pharmaceutical inventions to eligible importing countries, see Part 3. However, Part 3 does not prevent a compulsory licence from being ordered under this Part in relation to such an invention (see section 136C).

17 Section 134 (heading)

Repeal the heading, substitute:

134 Revocation of patent after grant of compulsory licence under section 133

18 Subsection 134(1)

After "compulsory licence", insert "ordered under section 133".

19 After section 136A

Insert:

Part 3—Patented pharmaceutical invention compulsory licences (for manufacture and export to eligible importing countries)

Division 1—Introduction

136B Simplified outline of this Part

The Federal Court may make an order under this Part requiring the grant of a compulsory licence to exploit a patented pharmaceutical invention for manufacture and export to an eligible importing country.

The court may order a compulsory licence to be granted if the proposed use of the pharmaceutical product is to address a public health issue in the eligible importing country:

(a) in a national emergency (or other extremely urgent circumstances); or

(b) by the public non-commercial use of the product.

The order may be amended or revoked by another order of the court.

The patentee must be paid an agreed amount of remuneration, or an amount of remuneration determined by the court.

136C Relationship between Parts 2 and 3

This Part does not prevent a compulsory licence from being ordered under Part 2 in relation to a patented pharmaceutical invention.

Division 2—Patented pharmaceutical invention compulsory licences

136D PPI compulsory licences—applications for orders

Application for order

(1) A person (the ***PPI order applicant***) may apply to the Federal Court for an order (the ***PPI order***) under section 136E requiring the patentee of a patented pharmaceutical invention to grant the PPI order applicant a licence (a ***PPI compulsory licence***) to exploit the invention to the extent necessary for the purposes of manufacturing a pharmaceutical product in Australia for export to an eligible importing country.

Note 1: A patented pharmaceutical invention may be a patented product or a patented process: see the definition of ***patented pharmaceutical invention*** in Schedule 1.

Note 2: For remuneration in respect of a licence, see section 136J.

(2) However, a person cannot apply for an order in respect of an innovation patent unless the patent has been certified.

Statement—eligible importing country

(3) An application must include a copy of a statement made by or on behalf of, and with the authorisation of, the eligible importing country to the effect that it will take reasonable measures within its means, proportionate to its administrative capacities and to the risk of trade diversion, to prevent re-exportation from its territory of a pharmaceutical product imported into its territory in accordance with a PPI compulsory licence.

Statement—importer

(4) If the pharmaceutical product is to be imported on behalf of, and with the authorisation of, the eligible importing country, an application must also include a copy of a statement made by the importer to the effect that it will take reasonable measures within its means to prevent the pharmaceutical product from being used other than in accordance with a PPI compulsory licence.

Parties

(5) The following are parties to proceedings on an application under this section:

(a) the PPI order applicant;

(b) the patentee;

(c) any person claiming an interest in the patent as exclusive licensee or otherwise;

(d) at the option of the eligible importing country—that country.

136E PPI compulsory licences—orders

(1) After hearing an application for a PPI order under section 136D, the Federal Court may, subject to this Part, make the order sought if the court is satisfied of all of the following matters:

(a) the application is made in good faith;

(b) the pharmaceutical product is to be imported:

(i) by the eligible importing country; or

(ii) by a person (the ***third party importer***) on behalf of, and with the authorisation of, the eligible importing country;

(c) the proposed use of the pharmaceutical product is to address a public health problem in the eligible importing country:

(i) in circumstances of national emergency or other circumstances of extreme urgency; or

(ii) in other circumstances—by the public non-commercial use of the pharmaceutical product;

(d) exploiting the patented pharmaceutical invention is necessary to enable the import and proposed use of the pharmaceutical product as mentioned in paragraphs (b) and (c);

(e) if subparagraph (c)(ii) applies:

(i) the PPI order applicant has given the patentee a notice in the approved form seeking from the patentee an authorisation to exploit the patented pharmaceutical invention for public non-commercial use; and

(ii) during the 30 days beginning when the notice was given, the PPI order applicant has tried, without success, to obtain such an authorisation from the patentee on reasonable terms and conditions;

(f) the notification requirements prescribed by regulation in relation to the importation of the pharmaceutical product into the eligible importing country have been complied with;

(g) the PPI order applicant, the eligible importing country and, if there is a third party importer, that importer, will take reasonable measures to prevent a pharmaceutical product that is exported from Australia in accordance with a PPI compulsory licence from being used for a purpose other than the purpose of addressing the public health problem mentioned in paragraph (c).

(2) Without limiting the matters that the court may take into account in deciding whether it is satisfied of a matter mentioned in subsection (1), the court must take into account any matters prescribed by regulation.

(3) A regulation made for the purposes of paragraph (1)(f) may:

(a) without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, prescribe different notification requirements for the

importation of pharmaceutical products into eligible importing countries of different kinds; and

(b) despite subsection 14(2) of the *Legislative Instruments Act 2003*, refer to eligible importing countries (or different kinds of eligible importing countries) by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or other writing as in force or existing from time to time.

136F PPI compulsory licences—terms

(1) A PPI order must direct that the PPI compulsory licence is granted on the following terms:

(a) no more than the quantity of the pharmaceutical product that is determined by the Federal Court to be necessary to meet the needs of the eligible importing country is manufactured;

(b) the entirety of the pharmaceutical product manufactured for that purpose is exported to that country;

(c) the pharmaceutical product is labelled and marked in accordance with the regulations;

(d) before shipment of the pharmaceutical product begins, the shipment information prescribed by regulation is made available on a website by, or on behalf of, the licensee for a minimum period prescribed by regulation;

(e) the duration of the licence is only for the period of time determined by the Federal Court to be necessary to address the public health problem concerned;

(f) the licence does not give the licensee, or a person authorised by the licensee, the exclusive right to exploit the patented pharmaceutical invention;

(g) the licence is to be assignable only in connection with an enterprise or goodwill in connection with which the licence is used;

(h) the licensee must give the Commissioner the information prescribed by regulation in relation to the licence in accordance with the regulations.

(2) A PPI order may also direct that the licence is to be granted on any other terms specified in the order, including terms covering:

(a) other requirements relating to the labelling and marking of the pharmaceutical product; and

(b) other information to be made available by the licensee and the way in which it is to be made available.

(3) However, a term specified in a PPI order must not be inconsistent with any regulations prescribed for the purposes of paragraph (1)(c), (d) or (h).

136G PPI compulsory licences—amendment

Application for order

(1) A person may apply to the Federal Court for an order amending any of the following terms of a PPI compulsory licence:

(a) the quantity of the pharmaceutical product concerned;

(b) how the pharmaceutical product is labelled and marked;

(c) the duration of the licence;

(d) the information that is to be made available by the licensee and the way it is to be made available.

Note: For remuneration in respect of the licence as amended, see section 136J.

Order

(2) The court may make the order sought in relation to a term if it is satisfied that:

(a) it is just to do so in all the circumstances; and

(b) the legitimate interests of the following are not likely to be adversely affected by the amendment of the term:

(i) the patentee;

(ii) any person claiming an interest in the patent as exclusive licensee or otherwise;

(iii) the licensee;

(iv) the eligible importing country.

(3) However, an amended term must not be inconsistent with any regulations prescribed for the purposes of paragraph 136F(1)(c), (d) or (h).

Parties

(4) The following are parties to any proceedings under this section:
(a) the applicant under subsection (1);
(b) the patentee;
(c) any person claiming an interest in the patent as exclusive licensee or otherwise;
(d) the licensee;
(e) at the option of the eligible importing country—that country.

136H PPI compulsory licences—revocation

Application

(1) A person may apply to the Federal Court for an order revoking a PPI compulsory licence.

Note: For remuneration in respect of the use of a PPI compulsory licence while it is in force, see section 136J.

Federal Court may revoke licence

(2) The Federal Court may make the order sought if the court is satisfied that:
(a) one or more of the following applies:
(i) the substantive circumstances that justified the grant of the licence have ceased to exist and are unlikely to recur;
(ii) the licensee has not complied with the terms of the licence;
(iii) if an amount of remuneration has been agreed or determined under section 136J—the amount has not been paid within the time agreed or determined; and
(b) the legitimate interests of the licensee or the eligible importing country are not likely to be adversely affected by the revocation.

Parties

(3) The following are parties to any proceedings under this section:
(a) the applicant for revocation;

(b) the licensee;
(c) at the option of the eligible importing country—that country.

Division 3—Remuneration

136J PPI compulsory licences—remuneration

Working out amount of remuneration

(1) The patentee is to be paid an amount agreed or determined under subsection (3) in respect of the use of a patented pharmaceutical invention authorised by a PPI compulsory licence.

(2) For the purposes of subsection (1), the use of a patented pharmaceutical invention authorised by the PPI compulsory licence is:
(a) while it is in force—the use authorised by the licence as granted and as amended (from time to time) under section 136G; or
(b) if it has ceased to be in force (whether because it was revoked or otherwise)—the actual use of the patented pharmaceutical invention under the licence while it was in force.

(3) For the purposes of subsection (1), the amount is:
(a) an amount agreed between the patentee and the PPI order applicant, licensee or former licensee (as the case requires); or
(b) if paragraph (a) does not apply—an amount determined by the Federal Court to be adequate remuneration taking into account the economic value to the eligible importing country of the use of the patented pharmaceutical invention authorised by the PPI compulsory licence.

Application to make or amend a determination

(4) A person may apply to the Federal Court:
(a) to make a determination under paragraph (3)(b); or
(b) to amend a determination made under that paragraph.

Note: Grounds for an application under paragraph (b) may include the fact that the terms of the PPI compulsory licence have been amended, or the licence has been revoked.

Parties

(5) The following are parties to any proceedings under this section:

(a) the applicant for the determination or the amendment of the determination;

(b) the PPI order applicant;

(c) the licensee;

(d) the patentee of the patented pharmaceutical invention;

(e) any person claiming an interest in the patent as exclusive licensee or otherwise.

Can PPI be exploited if remuneration is not agreed or determined?

(6) To avoid doubt, if the proposed use of the pharmaceutical product is to address a public health problem in the eligible importing country in circumstances of national emergency or other circumstances of extreme urgency, the licensee may exploit a patented pharmaceutical invention under a PPI compulsory licence, as granted or amended (as the case may be), whether or not an amount has been agreed or determined under this section.

(7) However, if the proposed use of the pharmaceutical product is to address a public health problem in the eligible importing country in other circumstances, by the public non-commercial use of the pharmaceutical product, the licensee must not exploit a patented pharmaceutical invention under a PPI compulsory licence unless an amount has been agreed or determined under this section.

Can PPI compulsory licence be revoked if remuneration is not agreed or determined?

(8) To avoid doubt, a PPI compulsory licence may be revoked whether or not an amount has been agreed or determined under this section.

Division 4—General

136K PPI compulsory licences—nature of orders

Without prejudice to any other method of enforcement, a PPI order operates as if it were embodied in a deed granting or amending a licence and executed by the patentee and all other necessary parties.

136L PPI compulsory licences—consistency of orders with international agreements

A PPI order must not be made that is inconsistent with a treaty between the Commonwealth and a foreign country.

136M PPI compulsory licences—applications heard together

Nothing in this Part prevents the Federal Court from dealing with the following applications together:

(a) applications for different PPI orders, or for the amendment or revocation of such orders;

(b) applications for determinations under paragraph 136J(3)(b) for remuneration in relation to different PPI compulsory licences, or for the amendment of such determinations.

Part 4—Surrender and revocation of patents

136N Simplified outline of this Part

A patentee may offer to surrender a patent by giving the Commissioner written notice.

The Commissioner may accept the offer of surrender, and revoke the patent, after hearing all interested parties. If court proceedings are pending in relation to the patent, leave of the court, or the consent of the parties, is required. The Commissioner must not accept the offer if a compulsory licence is in force in relation to the patent.

In addition, a court may revoke a patent on the following grounds:

(a) the patentee is not entitled to the patent;

(b) the invention is not a patentable invention;

(c) the patent was (broadly speaking) improperly obtained;

(d) the patent was (broadly speaking) obtained on the basis of a non-compliant specification.

20 Subsection 137(5)

Omit "compulsory licence", substitute "licence ordered under Part 2".

21 After section 138

Insert:

Part 5—Other matters

138A Simplified outline of this Part

This Part deals with the parties to proceedings under this Chapter (other than proceedings under Part 3).

This Part also enables the Commissioner to appear and be heard in all proceedings under this Chapter.

22 At the end of subsection 139(1)

Add:

Note: See Part 3 for details of parties to proceedings under that Part.

23 Subsection 139(2)

Omit "section 133, 134 or 138", substitute "this Chapter".

24 At the end of subsection 228(1)

Add:

; and (f) for the purpose of carrying out or giving effect to the WTO General Council decision of 30 August 2003.

25 After subsection 228(4)

Insert:

(5) Despite subsection 14(2) of the *Legislative Instruments Act 2003*, regulations made for the purposes of the definition of ***eligible importing country*** in Schedule 1 may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or other writing as in force or existing from time to time.

26 Schedule 1 (definition of *compulsory licence*)

Repeal the definition.

27 Schedule 1

Insert:

eligible importing country means a foreign country of a kind prescribed by regulation.

Note: A regulation made for the purposes of this definition may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or other writing as in force or existing from time to time (see subsection 228(5)).

28 Schedule 1

Insert:

patented pharmaceutical invention, in relation to a pharmaceutical product, means:

(a) if the product is a patented product—the patented product; or

(b) if the product results from the use of a patented process—the patented process.

29 Schedule 1

Insert:

pharmaceutical product means any patented product, or product manufactured through a patented process, of the pharmaceutical sector.

Example: Examples of a pharmaceutical product include:

(a) active ingredients necessary for manufacturing such a product; and
(b) diagnostic kits needed for using such a product.

30 Schedule 1

Insert:

PPI is short for patented pharmaceutical invention.

31 Schedule 1

Insert:

PPI compulsory licence has the meaning given by section 136D.

32 Schedule 1

Insert:

PPI order has the meaning given by section 136D.

33 Schedule 1

Insert:

PPI order applicant has the meaning given by section 136D.

34 Schedule 1

Insert:

TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights set out in Annex 1C to the Marrakesh Agreement establishing the World Trade Organization, done at Marrakesh on 15 April 1994, as Annex 1C is in force for Australia from time to time.

Note: The WTO Agreement is in Australian Treaty Series 1995 No. 8 ([1995] ATS 8) and could in 2014 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

35 Schedule 1

Insert:

WTO General Council decision of 30 August 2003 means the decision of the World Trade Organization General Council of

30 August 2003 (including the Annex to the decision) on the implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and public health.

Note: The decision could in 2014 be viewed on the World Trade Organization website (http://www.wto.org).

Part 2—Application

36 Application of amendments

(1) The amendments of the *Patents Act 1990* made by this Schedule apply in relation to patents granted before, on and after the commencement of this Schedule.

(2) The amendments of sections 70 and 71 of the *Patents Act 1990* made by this Schedule apply in relation to an application that is made on or after the commencement of this Schedule to include a pharmaceutical substance in the Australian Register of Therapeutic Goods.

Schedule 2—TRIPS Protocol: later commencing amendments

Patents Act 1990

1 Section 3 (list of definitions)

Omit "WTO General Council decision of 30 August 2003".

2 Paragraph 228(1)(f)

Omit "WTO General Council decision of 30 August 2003", substitute "TRIPS Agreement".

3 Schedule 1 (definition of *WTO General Council decision of 30 August 2003*)

Repeal the definition.

Schedule 3—Plant Breeder's Rights Act 1994: Federal Circuit Court

Plant Breeder's Rights Act 1994

1 Subsection 3(1) (definition of *Court*)

Repeal the definition.

2 Subsection 3(1)

Insert:

Federal Circuit Court means the Federal Circuit Court of Australia.

3 Subsection 3(1)

Insert:

Federal Court means the Federal Court of Australia.

4 Subsection 39(5)

Repeal the subsection, substitute:

(5) Nothing in this section affects the power of:

(a) the Federal Court, or a Judge of that Court, under subsection 44A(2) of the AAT Act; or

(b) the Federal Circuit Court, or a Judge of that Court, under subsection 44A(2A) of that Act;

where an appeal is begun in that court from a decision of the AAT.

5 Subsection 50(7)

Repeal the subsection, substitute:

(7) Nothing in this section affects the power of:

(a) the Federal Court, or a Judge of that Court, under subsection 44A(2) of the AAT Act; or

(b) the Federal Circuit Court, or a Judge of that Court, under subsection 44A(2A) of that Act.

6 Subsection 54(1)

Omit "Court", substitute "Federal Court or the Federal Circuit Court".

7 Subsections 54(3) and (4)

Omit "Court" (wherever occurring), substitute "court".

8 Subsection 55(1)

Omit "Court", substitute "Federal Court or the Federal Circuit Court".

9 Subsections 55(3) and (4)

Omit "Court", substitute "court".

10 Section 56 (heading)

Repeal the heading, substitute:

56 Jurisdiction of the Federal Court

11 Subsection 56(1)

Omit "Court" (wherever occurring), substitute "Federal Court".

12 At the end of subsection 56(1)

Add:

Note: A matter may also be transferred to the Federal Court from the Federal Circuit Court: see section 39 of the *Federal Circuit Court of Australia Act 1999*.

13 Subsection 56(2)

Repeal the subsection, substitute:

(2) That jurisdiction is exclusive of the jurisdiction of all other courts other than the jurisdiction of:

(a) the Federal Circuit Court under subsection 56A(2); and

(b) the High Court under section 75 of the Constitution.

14 Subsection 56(3)

Omit "Court" (wherever occurring), substitute "Federal Court".

15 Subsection 56(4)

Omit "Court", substitute "Federal Court".

16 Subsection 56(5)

Omit "the Court", substitute "the Federal Court".

17 Subsection 56(5)

Omit "rules", substitute "Rules".

Note: This item fixes a typographical error.

18 After section 56

Insert:

56A Jurisdiction of Federal Circuit Court

(1) The Federal Circuit Court has jurisdiction with respect to matters in which actions may, under this Part, be begun in the Federal Circuit Court.

Note: A matter may also be transferred to the Federal Circuit Court from the Federal Court: see section 32AB of the *Federal Court of Australia Act 1976*.

(2) That jurisdiction is exclusive of the jurisdiction of all other courts, other than the jurisdiction of:

(a) the Federal Court under subsection 56(2) of this Act; and

(b) the High Court under section 75 of the Constitution.

(3) The relief that the Federal Circuit Court may grant in an action or proceeding for infringement of PBR includes an injunction (subject to such terms, if any, as the Federal Circuit Court thinks fit) and, at the option of the plaintiff, either damages or an account of profits.

(4) The regulations may make provision in relation to the practice and procedure of the Federal Circuit Court in actions under this Act, including provision prescribing the time within which any action may be begun, or any other act or thing may be done, and providing for the extension of any such time.

(5) Subsection (4) does not limit the power of the Judges of the Federal Circuit Court, or a majority of them, to make Rules of

Court under section 81 of the *Federal Circuit Court of Australia Act 1999* that are consistent with the regulations referred to in that subsection.

19 Subsection 57(1)

Omit "The Court", substitute "A court".

20 Subsection 57(1)

Omit "the Court", substitute "the court".

21 Section 72

Omit "the High Court Rules and the Federal Court Rules", substitute "Rules of Court of the High Court, the Federal Court or the Federal Circuit Court".

Schedule 4—Australia New Zealand Single Economic Market

Part 1—Amendments

Designs Act 2003

1 Section 145

Before "Where", insert "(1)".

2 Section 145

After "Australia", insert "or New Zealand".

3 Section 145

Omit "post", substitute "a prescribed means".

4 At the end of section 145

Add:

(2) After the time specified in the regulations, a reference in this section to an ***address*** includes a reference to an electronic address.

(3) The time specified under subsection (2) must be later than the day on which the regulations are registered under the *Legislative Instruments Act 2003*.

(4) For the purposes of this section, the question of whether an electronic address is in Australia is to be determined in accordance with the regulations.

(5) For the purposes of this section, the question of whether an electronic address is in New Zealand is to be determined in accordance with the regulations.

Patents Act 1990

5 Section 3 (list of definitions)

Insert "Board".

6 Section 3 (list of definitions)

Insert "Director-General of IP Australia".

7 Section 3 (list of definitions)

Insert "New Zealand Assistant Commissioner of Patents".

8 Section 3 (list of definitions)

Insert "New Zealand Commissioner of Patents".

9 Section 3 (list of definitions)

Insert "New Zealand delegate".

10 Section 3 (list of definitions)

Insert "New Zealand Patents Minister".

11 Section 3 (list of definitions)

Insert "New Zealand patents official".

12 Section 3 (list of definitions)

Omit "Professional Standards Board".

13 Section 3 (list of definitions)

Insert "Registrar of Companies of New Zealand".

14 Subsection 20(2)

Omit "or an employee,", substitute "an employee, or a New Zealand delegate,".

15 At the end of section 20

Add:

(3) For the purposes of this section, it is immaterial whether an act was done in New Zealand.

16 At the end of section 183

Add:

(3) The Designated Manager may disclose to the Registrar of Companies of New Zealand information (including personal information within the meaning of the *Privacy Act 1988*) that is:

(a) relevant to the functions conferred on the Registrar of Companies of New Zealand by or under the Companies Act 1993 of New Zealand; and

(b) obtained by the Designated Manager as a result of the performance of functions and duties, or the exercise of powers, in relation to incorporated patent attorneys.

(4) For the purposes of subsection (3), it is immaterial whether the disclosure takes place in New Zealand.

(5) The Commissioner may disclose to a New Zealand delegate information (including personal information within the meaning of the *Privacy Act 1988*) that is relevant to the exercise of the powers, or the performance of the functions, delegated to the New Zealand delegate under subsection 209(1A).

(6) For the purposes of subsection (5), it is immaterial whether the disclosure takes place in New Zealand.

17 Section 185

Repeal the section.

18 Paragraph 198(4)(a)

Repeal the paragraph.

19 Subsection 198(5)

Omit "Professional Standards Board", substitute "Board".

20 Subsections 198(7) and (8)

Repeal the subsections, substitute:

(7) A reference in this section to ***conviction*** of an offence includes a reference to:

(a) the making of an order under section 19B of the *Crimes Act 1914* in relation to the offence; or

(b) the making of an order under a corresponding provision of a law of:

(i) a State; or
(ii) a Territory; or
(iii) New Zealand;
in relation to the offence.

21 At the end of section 198

Add:

New Zealand

(12) It is immaterial whether a matter mentioned in:
(a) paragraph (4)(b), (c), (d), (e), (f) or (g); or
(b) subsection (5); or
(c) paragraph (9)(a), (b) or (c); or
(d) paragraph (11)(b);
concerns something that happened in New Zealand.

22 Section 199

Before "The name", insert "(1)".

23 At the end of section 199

Add:

(2) It is immaterial whether the prescribed grounds concern something that happened in New Zealand.

24 Before subsection 209(1)

Insert:

Delegation to employees

25 After subsection 209(1)

Insert:

Delegation to New Zealand patents officials

(1A) The Commissioner may, by instrument, signed by him or her, delegate all or any of the Commissioner's powers or functions under this Act to a New Zealand patents official.

(1B) A function or power delegated under subsection (1A) may be performed or exercised by the delegate in New Zealand.

26 Before subsection 209(2)

Insert:

Direction or supervision

27 Section 214

Before "A document", insert "(1)".

28 At the end of section 214

Add:

(2) For the purposes of this Act, a prescribed document is taken to have been filed with the Patent Office if the document is delivered or given to:

(a) the New Zealand Commissioner of Patents; or

(b) a New Zealand Assistant Commissioner of Patents; or

(c) a person who, under a law of New Zealand, is a delegate of the New Zealand Commissioner of Patents;

in a prescribed manner.

(3) The regulations may provide that a document filed with the Patent Office because of subsection (2) is taken to have been so filed at the time ascertained in accordance with the regulations.

29 Section 221

Before "Where", insert "(1)".

30 Section 221

After "Australia", insert "or New Zealand".

31 Section 221

Omit "post", substitute "a prescribed means".

32 At the end of section 221

Add:

(2) After the time specified in the regulations, a reference in this section to an ***address*** includes a reference to an electronic address.

(3) The time specified under subsection (2) must be later than the day on which the regulations are registered under the *Legislative Instruments Act 2003*.

(4) For the purposes of this section, the question of whether an electronic address is in Australia is to be determined in accordance with the regulations.

(5) For the purposes of this section, the question of whether an electronic address is in New Zealand is to be determined in accordance with the regulations.

33 After paragraph 223(1)(b)

Insert:

(ba) a New Zealand delegate; or

34 After subsection 223(1)

Insert:

(1A) For the purposes of subsection (1), it is immaterial whether a relevant act took place, or is to take place, in New Zealand.

(1B) For the purposes of subsection (1), it is immaterial whether an error or omission took place in New Zealand.

35 After subsection 224(3)

Insert:

(3A) For the purposes of this section, it is immaterial whether a decision was made in New Zealand.

36 Section 227 (heading)

Repeat the heading, substitute:

227 Fees payable under this Act

37 At the end of section 227

Add:

(6) For the purposes of this Act, if:

(a) a fee is declared by the regulations to be a fee to which this subsection applies; and

(b) the fee is paid to:

(i) the New Zealand Commissioner of Patents; or

(ii) a New Zealand Assistant Commissioner of Patents; or

(iii) a person who, under a law of New Zealand, is a delegate of the New Zealand Commissioner of Patents; and

(c) the New Zealand Commissioner of Patents, the New Zealand Assistant Commissioner of Patents, or the delegate, as the case may be, is authorised to receive the fee on behalf of the Commonwealth; and

(d) the fee is paid in New Zealand currency;

then:

(e) the liability to pay the fee is discharged; and

(f) this Act has effect as if the fee had been paid in accordance with the regulations.

(7) For the purposes of subsection (6), the amount of the fee in New Zealand currency is to be ascertained in accordance with the regulations.

38 After section 227

Insert:

227AA Receipt of fees payable under New Zealand law

The regulations may make provision for and in relation to authorising:

(a) the Commissioner; or

(b) a Deputy Commissioner; or

(c) an employee;

to receive, on behalf of New Zealand, a specified fee payable under a specified law of New Zealand that relates to patents for inventions, so long as:

(d) the fee is paid in Australian currency; and

(e) the amount of the fee in Australian currency is ascertained in accordance with the regulations.

227AB Application of administrative law regime to decisions made in New Zealand

Judicial review

(1) For the purposes of the application of the *Administrative Decisions (Judicial Review) Act 1977* to a decision under this Act, it is immaterial whether the decision was made in New Zealand.

Note: See also the *Trans-Tasman Proceedings Act 2010*.

(2) For the purposes of subsection (1), ***decision*** has the same meaning as in the *Administrative Decisions (Judicial Review) Act 1977*.

Merits review

(3) For the purposes of the application of the *Administrative Appeals Tribunal Act 1975* to a decision under this Act, it is immaterial whether the decision was made in New Zealand.

Note: See also the *Trans-Tasman Proceedings Act 2010*.

(4) For the purposes of subsection (3), ***decision*** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

39 Section 227A (heading)

Repeal the heading, substitute:

227A Trans-Tasman IP Attorneys Board

40 Subsection 227A(1)

Repeal the subsection, substitute:

(1) The body known immediately before the commencement of this subsection as the Professional Standards Board for Patent and

Trade Marks Attorneys is continued in existence as the Trans-Tasman IP Attorneys Board.

Note 1: In this Act, ***Board*** means the Trans-Tasman IP Attorneys Board—see Schedule 1.

Note 2: See also section 25B of the *Acts Interpretation Act 1901*.

41 Subsection 227A(2)

Omit "Professional Standards Board" (wherever occurring), substitute "Board".

42 After subsection 227A(2)

Insert:

Membership of the Board

(2A) The Board consists of the following members:

(a) a Chair;

(b) the Director-General of IP Australia;

(c) the New Zealand Commissioner of Patents;

(d) at least 2 members nominated by the New Zealand Patents Minister to represent the New Zealand patent attorney profession;

(e) at least 2 other members.

(2B) The total number of members of the Board must not exceed 10.

Appointment of members of the Board

(2C) Each member of the Board mentioned in paragraph (2A)(a), (d) or (e) is to be appointed by the Minister by written instrument.

Note: For reappointment, see the *Acts Interpretation Act 1901*.

(2D) A person is not eligible for appointment as a member of the Board mentioned in paragraph (2A)(a), (d) or (e) unless the Minister is satisfied that the person has:

(a) substantial experience or knowledge; and

(b) significant standing;

in at least one of the following fields:

(c) Australian patent attorney practice;

(d) New Zealand patent attorney practice;
(e) Australian trade mark attorney practice;
(f) the regulation of persons engaged in a prescribed occupation;
(g) public administration;
(h) academia.

(2E) A member of the Board holds office on a part-time basis.

Period of appointment for members of the Board

(2F) A member of the Board mentioned in paragraph (2A)(a), (d) or (e) holds office for the period specified in the instrument of appointment. The period must not exceed:
(a) in the case of the member mentioned in paragraph (2A)(a)—3 years; or
(b) otherwise—5 years.

Note: For reappointment, see the *Acts Interpretation Act 1901*.

Appointment of deputy of Director-General of IP Australia

(2G) The Director-General of IP Australia may appoint an APS employee to be his or her deputy for the purpose of attendance at one or more specified meetings of the Board.

(2H) If:
(a) a person is the deputy of the Director-General of IP Australia for the purpose of attendance at a particular meeting of the Board; and
(b) the Director-General of IP Australia is absent from the meeting;

the person is entitled to attend the meeting and, when so attending, is taken to be a member of the Board.

(2J) A deputy of the Director-General of IP Australia is not entitled to any remuneration or allowances for attending a meeting of the Board (other than remuneration or allowances payable to the deputy in his or her capacity as an APS employee).

Appointment of deputy of New Zealand Commissioner of Patents

(2K) The New Zealand Commissioner of Patents may appoint a New Zealand patents official to be his or her deputy for the purpose of attendance at one or more specified meetings of the Board.

(2L) If:

(a) a person is the deputy of the New Zealand Commissioner of Patents for the purpose of attendance at a particular meeting of the Board; and

(b) the New Zealand Commissioner of Patents is absent from the meeting;

the person is entitled to attend the meeting and, when so attending, is taken to be a member of the Board.

(2M) A deputy of the New Zealand Commissioner of Patents is not entitled to any remuneration or allowances for attending a meeting of the Board (other than remuneration or allowances payable to the deputy in his or her capacity as a New Zealand patents official).

43 Paragraph 227A(3)(a)

Repeal the paragraph, substitute:

(a) the terms and conditions on which members of the Board mentioned in paragraph (2A)(a), (d) or (e) hold office; and

(aa) the manner in which members of the Board mentioned in paragraph (2A)(a), (d) or (e) may resign their appointments; and

(ab) the termination of the appointment of members of the Board mentioned in paragraph (2A)(a), (d) or (e); and

44 Paragraphs 227A(3)(b) and (c)

Omit "Professional Standards Board", substitute "Board".

45 Subsections 227A(4) and (5)

Omit "Professional Standards Board", substitute "Board".

46 At the end of section 227A

Add:

(7) The Board may perform its functions in Australia or New Zealand.

47 Subparagraph 228(2)(r)(ia)

Omit "Professional Standards Board", substitute "Board".

48 After subsection 228(4)

Insert:

(4A) If the regulations confer a function on a person or body, the regulations may provide that the function may be performed in Australia or New Zealand.

(4B) If the regulations confer a power on a person or body, the regulations may provide that the power may be exercised in Australia or New Zealand.

(4C) If the regulations provide that application may be made to the Administrative Appeals Tribunal for review of a decision, the regulations may provide that it is immaterial whether the decision was made in New Zealand.

(4D) The regulations may provide that it is immaterial whether an act or omission mentioned in the regulations took place in New Zealand.

(4E) The regulations may provide that it is immaterial whether a matter mentioned in the regulations concerns something that took place in New Zealand.

49 Schedule 1

Insert:

Board means the Trans-Tasman IP Attorneys Board continued in existence by section 227A.

50 Schedule 1 (definition of *company*)

Repeal the definition, substitute:

company means:

(a) a company registered under the *Corporations Act 2001*; or

(b) a company registered under the Companies Act 1993 of New Zealand.

51 Schedule 1

Insert:

Director-General of IP Australia means the SES employee who holds or performs the duties of the position of Director-General of IP Australia.

52 Schedule 1 (at the end of the definition of *file*)

Add:

Note: See also section 214.

53 Schedule 1

Insert:

New Zealand Assistant Commissioner of Patents means a person who holds or performs the duties of an office or position of Assistant Commissioner of Patents under or in accordance with a law of New Zealand.

54 Schedule 1

Insert:

New Zealand Commissioner of Patents means the person who holds or performs the duties of the office or position of Commissioner of Patents under or in accordance with a law of New Zealand.

55 Schedule 1

Insert:

New Zealand delegate means a New Zealand patents official who is a delegate under subsection 209(1A).

56 Schedule 1

Insert:

New Zealand Patents Minister means the Minister of New Zealand who:

(a) under the authority of a warrant; or

(b) with the authority of the Prime Minister of New Zealand;

is responsible for the administration of a law of New Zealand relating to the regulation of patent attorneys.

57 Schedule 1

Insert:

New Zealand patents official means a person:

(a) who is an employee in any part of the State services of New Zealand; and

(b) whose functions or duties relate to the administration of a law of New Zealand relating to patents for inventions.

58 Schedule 1 (definition of *Professional Standards Board*)

Repeal the definition.

59 Schedule 1

Insert:

Registrar of Companies of New Zealand means the person who holds or performs the duties of the office or position of Registrar of Companies under or in accordance with the Companies Act 1993 of New Zealand.

Plant Breeder's Rights Act 1994

60 Subsection 3(1)

Insert:

address has a meaning affected by subsection (2).

61 Subsection 3(2)

Repeal the subsection, substitute:

Electronic address

(2) After the time specified in the regulations, a reference in this Act to an ***address*** includes a reference to an electronic address.

(3) The time specified under subsection (2) must be later than the day on which the regulations are registered under the *Legislative Instruments Act 2003*.

(4) Subsection (2) of this section does not apply to the following references to an ***address***:

(a) a reference in subsection 26(2);

(b) the first reference in subsection 26(3).

(5) For the purposes of this Act, the question of whether an electronic address is in Australia is to be determined in accordance with the regulations.

(6) For the purposes of this Act, the question of whether an electronic address is in New Zealand is to be determined in accordance with the regulations.

62 After subsection 19(5)

Insert:

(5A) An address given under paragraph (5)(c) must be an address in Australia or New Zealand.

63 Subsection 21(5)

After "Australia", insert "or New Zealand".

64 Subsection 26(3)

After "overseas", insert "in a country other than New Zealand".

65 Subsection 26(3)

After "Australia" (first occurring), insert "or New Zealand".

66 Subsection 26(3)

Omit "a postal address in Australia", substitute "an address in Australia or New Zealand".

67 Subsection 31(3)

After "Australia", insert "or New Zealand".

68 Section 73

Repeal the section, substitute:

73 Service of documents

If:

(a) this Act provides for a document to be served on, or given or sent to, a person; and

(b) the person has given the Secretary or the Registrar an address in Australia or New Zealand for service;

the document may be served on, or given or sent to, the person by a prescribed means to that address.

Trade Marks Act 1995

69 Readers guide (list of terms defined in section 6)

Insert the following term in its appropriate alphabetical position:

"Board".

70 Readers guide (list of terms defined in section 6)

Omit "Professional Standards Board".

71 Subsection 6(1)

Insert:

Board has the same meaning as in the *Patents Act 1990*.

72 Subsection 6(1) (definition of *Professional Standards Board*)

Repeal the definition.

73 At the end of subsection 215(5)

Add "or New Zealand".

74 Paragraph 215(6)(a)

Repeal the paragraph, substitute:

(a) if the person has an address for service—the document may be served on, or given or sent to, the person by a prescribed means to that address; or

75 Paragraph 215(6)(b)

After "Australia" (first occurring), insert "or New Zealand".

76 Paragraph 215(6)(b)

Omit "post", substitute "a prescribed means".

77 Paragraph 215(6)(b)

After "Australia" (second occurring), insert "or New Zealand".

78 At the end of section 215

Add:

(8) After the time specified in the regulations, a reference in this section to an ***address*** includes a reference to an electronic address.

(9) The time specified under subsection (8) must be later than the day on which the regulations are registered under the *Legislative Instruments Act 2003*.

(10) For the purposes of this section, the question of whether an electronic address is in Australia is to be determined in accordance with the regulations.

(11) For the purposes of this section, the question of whether an electronic address is in New Zealand is to be determined in accordance with the regulations.

79 Subsection 228A(5)

Omit "the Professional Standards Board", substitute "the Board".

80 Subsection 228A(5) (note)

Omit "***Professional Standards Board***", substitute "***Board***".

81 Subparagraph 231(2)(ha)(ia)

Omit "Professional Standards Board", substitute "Board".

Part 2—Transitional provisions

82 Transitional—registration as a patent attorney

(1) The Designated Manager must:

(a) register as a patent attorney an individual who, immediately before the commencement of this item:

(i) was registered as a patent attorney under a law of New Zealand; and

(ii) was not a registered patent attorney (within the meaning of the *Patents Act 1990*); and

(b) do so as soon as practicable after the commencement of this item.

(2) The registration is to consist of entering the individual's name in the Register of Patent Attorneys.

(3) For the purposes of the *Patents Act 1990*, the registration is taken to be under that Act.

83 Transitional—qualification for registration as a patent attorney

(1) A qualification specified in, or ascertained in accordance with, regulations made for the purposes of paragraph 198(4)(b) of the *Patents Act 1990* may consist of passing examinations conducted in New Zealand, so long as:

(a) the examinations are specified in those regulations; and

(b) at least one of those examinations was passed before the commencement of this item; and

(c) the remaining examinations are passed before the end of the 4-year period beginning at the commencement of this item.

(2) Regulations authorised by subitem (1) do not apply to examinations passed by an individual unless the individual applies for registration as a patent attorney under section 198 of the *Patents Act 1990* within 6 months after the completion of the last of those examinations.

(3) Subitem (1) does not limit paragraph 198(4)(b) of the *Patents Act 1990*.

84 Transitional—conduct of patent attorneys

(1) Grounds prescribed for the purposes of section 199 of the *Patents Act 1990* may relate to conduct that took place in New Zealand before the commencement of this item.

(2) Subitem (1) does not limit section 199 of the *Patents Act 1990*.

85 Transitional—registration as a trade marks attorney

(1) If:

(a) immediately before the commencement of this item, an individual:

(i) was registered as a patent attorney under a law of New Zealand; and

(ii) was not a registered trade marks attorney (within the meaning of the *Trade Marks Act 1995*); and

(b) within 12 months after the commencement of this item, the individual applies to the Designated Manager to be registered as a trade marks attorney; and

(c) the application is in accordance with the regulations; and

(d) the individual satisfies the Designated Manager, in accordance with the regulations, that the individual's level of competency in trade marks law and practice is sufficient to warrant the individual becoming a registered trade marks attorney; and

(e) the individual has not been convicted of a prescribed offence during the 5-year period ending when the application was made; and

(f) the individual is not under sentence of imprisonment for a prescribed offence;

the Designated Manager must register the individual as a trade marks attorney.

(2) The registration is to consist of entering the individual's name in the Register of Trade Marks Attorneys.

(3) For the purposes of the *Trade Marks Act 1995*, the registration is taken to be under that Act.

(4) The Governor-General may make regulations for the purposes of this item.

(5) It is immaterial whether a matter mentioned in paragraph (1)(d), (e) or (f) concerns something that happened in New Zealand.

(6) A reference in this item to ***conviction*** of an offence includes a reference to:

(a) the making of an order under section 19B of the *Crimes Act 1914* in relation to the offence; or

(b) the making of an order under a corresponding provision of a law of:

(i) a State; or

(ii) a Territory; or

(iii) New Zealand;

in relation to the offence.

Schedule 5—Other amendments

Part 1—Document retention

Division 1—Amendments

Designs Act 2003

1 Paragraph 69(3)(b)

Omit "design; and", substitute "design.".

2 Paragraph 69(3)(c)

Repeal the paragraph.

Patents Act 1990

3 Paragraph 228(2)(u)

Repeal the paragraph.

Trade Marks Act 1995

4 Paragraph 231(2)(h)

Repeal the paragraph.

Division 2—Application of amendments

5 Application of amendments

The amendments made by this Part apply in relation to material and documents provided or filed before, on or after the commencement of this Part.

Part 2—Technical amendments

Division 1—Amendments

Patents Act 1990

6 Section 24 (heading)

Repeal the heading, substitute:

24 Validity not affected by making information available in certain circumstances

7 Section 29A (note)

Repeal the note.

8 At the end of section 29

Add:

(6) An applicant is not entitled to ask that any action be taken, or that he or she be allowed to take any action, under this Act in relation to a PCT application unless the following requirements of subsection (5) have been met (if applicable):

(a) a translation of the application into English has been filed;

(b) the prescribed documents have been filed;

(c) the prescribed fees have been paid.

Note: A failure to comply with subsection (5) may also result in the PCT application lapsing: see paragraph 142(2)(f).

9 Subsection 29B(2)

Omit "within the prescribed period".

10 Subsection 29B(6)

Omit "subsection (1)", substitute "the definition of ***Convention country*** in subsection (5)".

11 Before subsection 40(2)

Insert:

Requirements relating to complete specifications

12 Before subsection 41(1)

Insert:

Provisional specifications

(1A) A specification is taken to comply with subsection 40(1), so far as it requires a description of a micro-organism, if:

(a) the micro-organism is deposited with a prescribed depository institution in accordance with such provisions of the Budapest Treaty as are applicable; and

(b) the prescribed circumstances apply.

Complete specifications

13 Paragraph 43(2A)(b)

After "discloses", insert ", or a prescribed set of prescribed documents considered together disclose,".

14 After subsection 43(2A)

Insert:

(2B) A prescribed document, or a prescribed set of prescribed documents considered together, is taken to disclose the invention in a claim as mentioned in paragraph (2A)(b) so far as such disclosure requires a description of a micro-organism, if:

(a) the micro-organism is deposited with a prescribed depository institution in accordance with such provisions of the Budapest Treaty as are applicable; and

(b) the prescribed circumstances apply.

15 At the end of subparagraph 101E(1)(a)(ix)

Add "and".

16 Paragraph 119(3)(b)

Omit "through any publication or use of the invention".

17 Subsection 178(4)

Omit "subsection (1) or (2)", substitute "this section".

18 Subsection 191A(4)

Omit "a declaration, or rectify the Register, under this section", substitute "a declaration under subsection (2), or rectify the Register under subsection (3),".

19 Paragraph 224(1)(a)

Omit "or 142(2)(b)".

Division 2—Application of amendments

20 Application of amendments

(1) The amendments made by items 6 and 16 apply in relation to information that is made publicly available at or after the time those items commence.

(2) The amendments made by items 7, 8 and 9 apply in relation to applications made at or after the time those items commence.

(3) The amendment made by item 12 applies in relation to provisional applications made at or after the time that item commences.

(4) The amendments made by items 13 and 14 apply in relation to:

(a) patents for which the complete application is made at or after the time those items commence; and

(b) standard patents for which the application had been made before the time those items commence, if the applicant had not asked for an examination of the patent request and specification for the application under section 44 of the *Patents Act 1990* before that time; and

(c) innovation patents granted at or after the time those items commence, if the complete application to which the patent relates had been made before that time; and

(d) complete patent applications made at or after the time those items commence; and

(e) complete applications for standard patents made before the time those items commence, if the applicant had not asked for an examination of the patent request and specification for the application under section 44 of the *Patents Act 1990* before that time; and

(f) complete applications for innovation patents made before the time those items commence, if a patent had not been granted in relation to the application on or before that time; and

(g) innovation patents granted before the time those items commence, if:

(i) the Commissioner had not decided to examine the complete specification relating to the patent under section 101A of the *Patents Act 1990* before that time; and

(ii) the patentee or any other person had not asked the Commissioner to examine the complete specification relating to the patent under section 101A of the *Patents Act 1990* before that time.

(5) The amendment made by item 18 applies on and after the day that item commences in relation to patents granted before, on or after that commencement.