



## Innovation Patents

### 1. Innovation Patent Applications

The Australian patent system provides for the filing of “standard” and “innovation” patent applications.

Innovation patents have several strategic and practical benefits. We recommend considering filing an application for an innovation patent as an adjunct to a standard patent application.

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### 2. Features of Innovation Patents

Innovation patents have the following advantageous features:

#### > **Wide Technology Eligibility**

Innovation patents can be granted and certified for most inventions patentable by way of a standard patent.

However, plants and animals, and the biological processes for their generation are not patentable by way of an innovation patent (this exclusion does not apply if the invention is a microbiological process or a product of such a process). In addition, an innovation patent is revocable if it claims a food or medicine which is a mere mixture of known ingredients, or a process producing that food or medicine.

#### > **Broad Claim Coverage**

A patent specification for an innovation patent is permitted to contain five claims defining the invention, any number of which may be independent.

The application can be filed, and an innovation patent can be granted, with more than five claims. However, during post grant examination and prior to certification it will be necessary to restrict the patent to five claims.

#### > **Flexible Claim Scope**

An innovation patent application may be divided from a standard patent application (including a national phase entry of an international PCT application), and both applications may initially contain claims of the same scope. Eventually the claims of the innovation patent and/or the standard patent application will require amendment so that the claims are of different scope and thereby allow both patents to co-exist. However, the ability to take that approach maximises the flexibility in considering final claim scope of each patent.

#### > **No Pre Grant Search and Examination**

Innovation patent applications are not subject to substantive prior art searches or examination before patent grant. The applications only undergo review as to formalities shortly after filing and then proceed quickly to patent grant. At grant, the innovation patent is officially published.

#### > **No Pre Grant Opposition**

Third party opposition to innovation patents is not available before patent grant. Thus, patent grant is not delayed as a consequence of opposition by third parties.

#### > **Rapid Patent Grant**

Innovation patents are usually granted within about three months of filing the application.

#### > **Voluntary Post Grant Examination and Certification**

Innovation patents will be examined by the Patent Office upon request by either the patentee or a third party. After successful completion of examination, the patent will be certified. Following certification, the patent can be enforced against third parties. Prior to certification, it is an offence to threaten a person with infringement proceedings in respect of the innovation patent.

#### > **Limited Third Party Opposition**

A third party can only oppose an innovation patent after certification. Thus, certification is not held up by opposition.

#### > **Significant Patent Term**

An innovation patent has a term of eight years from the filing date of the innovation application or eight years from the date of the patent application when filed as a divisional application. The eight year term is subject to annual renewal from the second anniversary of the filing date.

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### 3. **Benefits of Innovation Patents**

Innovation patents provide owners with the following benefits:

#### > **Lower Threshold of Patentability**

An innovation patent can be obtained for innovative features that are not sufficiently “inventive” to qualify for a standard patent, but which nevertheless contribute to the working of a development and so satisfy the requirements for an innovation patent grant. This means that a valid innovation patent can be obtained where it transpires that the invention may not qualify for a valid standard patent grant.

#### > **Early Enforceable Rights**

The rapid grant and certification process means that enforceable patent rights can be obtained quickly in Australia. Those rights can be in place whilst the standard application is still being processed through to patent grant.

#### > **Low Cost**

The cost of filing an innovation patent application is significantly discounted when filed in conjunction with a standard application.

Ongoing costs of an innovation application and patent are less than for a standard application and patent.

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### 4. **Summary**

An innovation patent is an economic option for quickly obtaining effective protection to either supplement any main patent grant or, if that main patent should be found to be invalid, to recover protection for the invention.

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