

The innovation patent and process in Australia

Please note: The Australian Government is in the process of phasing out innovation patents. The last day you can file a new (non-divisional) innovation patent will be 25 August 2021. Please visit the IP Australia website for further information, or contact an FB Rice representative.

Innovation patents are intended to provide protection for simple technical advances that are not sufficiently inventive to meet the “inventive step” requirement for standard patents. The innovation patent has a lower threshold called an “innovative step”, which requires that the invention claimed differs from the prior art so as to “substantially contribute to the working”. There is no non-obvious requirement. The invention must also satisfy the criteria that it is new, useful and a manner of manufacture.

The innovation patent system is designed to suit small to medium sized enterprises and individuals, although the system has been regularly used by larger corporations. Innovation patents are intended to provide an industrial property right that is quick and easy to obtain and suited to inventions with a short commercial life. Obtaining an innovation patent is less costly as it is not examined for substantive issues before grant. It only goes through a formalities check which is used to make sure that all the necessary documents have been provided and that the application is not in respect of humans, plant or animals, or biological processes.

Substantive examination for issues like novelty and inventive step occurs after grant and is not automatic. A request for substantive examination can be made at any time by the owner or a third party. If the examination is successful, the innovation patent is “certified” by the patent Office. Only once the innovation patent is certified does the patent owner have the right to enforce the patent in the same way as a standard patent.

An innovation patent specification is limited to 5 claims, which may all be independent. Annual renewal fees for maintaining an innovation patent are payable each year from the second anniversary of the filing date and an innovation patent can remain in force for a maximum of 8 years. An innovation patent can claim convention priority. Conversion to an innovation patent application can be made from a provisional or standard patent application.

What happens during the innovation patent process? See the flowchart on the next page.

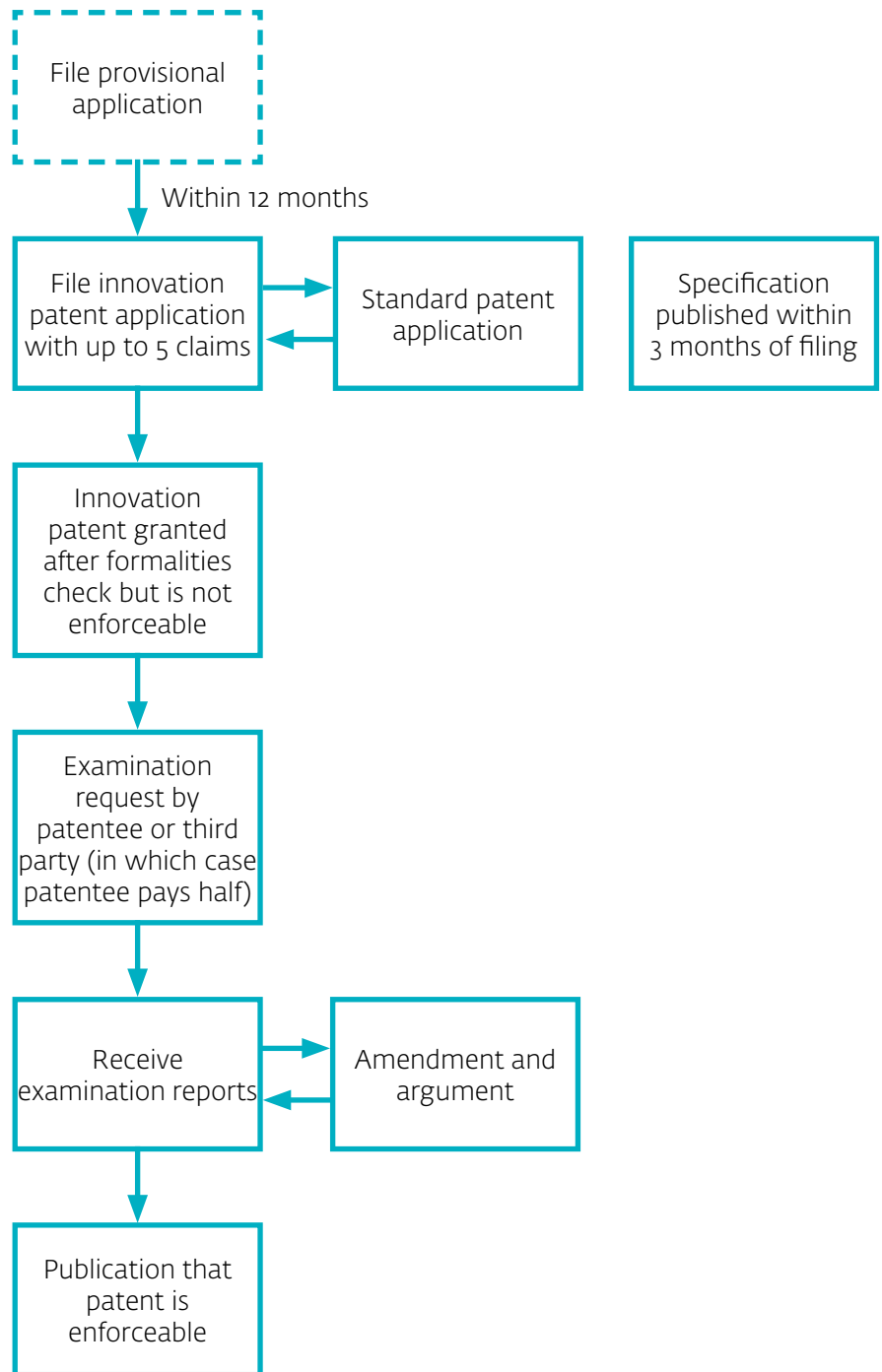
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Contact us

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The innovation patent process



Renewal fees due each year from second year after filing

Innovation patent has maximum term of 8 years from filing date