

Trans-Tasman Teamwork

Single examination for Australian and New Zealand patent applications

Since August 2009, the Australian and New Zealand governments have been focusing on a Single Economic Market (SEM) framework, which aims to accelerate trans-Tasman regulatory integration including in the area of Intellectual Property Law.

In the area of patents, this reform is directed to implementing filing of a single patent application which designates both Australia and New Zealand. The single application can be filed either in Australia or New Zealand. The single application will be examined for both countries by either an Australian or New Zealand patent examiner who will consider both Australian and New Zealand patent legislation. The examiner will then issue two separate examination reports simultaneously.

This reform is intended to ensure cost savings in filing and examination fees for applicants who wish to obtain patents in both Australia and New Zealand.

But bear in mind that separate national protection will still be available.

Indeed, it is almost certainly the case that every New Zealand application is also filed in Australia, but not so the other way around. We think this will mean that patent applicants will file either an Australian application only or a single joint application if interested in both countries, and that discrete New Zealand applications will hardly ever be filed.

The implementation plan for this single patent application and examination process was jointly published recently by IP Australia and the Intellectual Property Office of New Zealand.



The first stage of the plan is work sharing, where Australian and New Zealand Examiners will be able to rely on each other's work, such as prior art search results and examination reports. The practicality of work sharing is slightly at this stage, given that the one examiner (in either country) is supposed to conduct both examinations. What work product is there to share?

Stage two is the provision of a process by which a single patent application is filed that covers both countries. It remains to be seen how these single applications are allocated between the respective Patent Offices; we would imagine the split will be in proportion to the number of examiners in the respective Patent Office (Australia has an examiner corps of about 250, while New Zealand has perhaps only 15), or perhaps on a by technology basis.

The final step is activation of the examination process, presently expected to occur no sooner than June 2014.

It remains to be seen if the stated objectives of "sav[ing] customers time and money in

providing strong patent protection" will be achieved, although it makes logical sense that there can be a time efficiency if one examiner rather than two needs to read each patent specification and conduct a single prior art search, even if two sets of differing laws have to be applied.



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