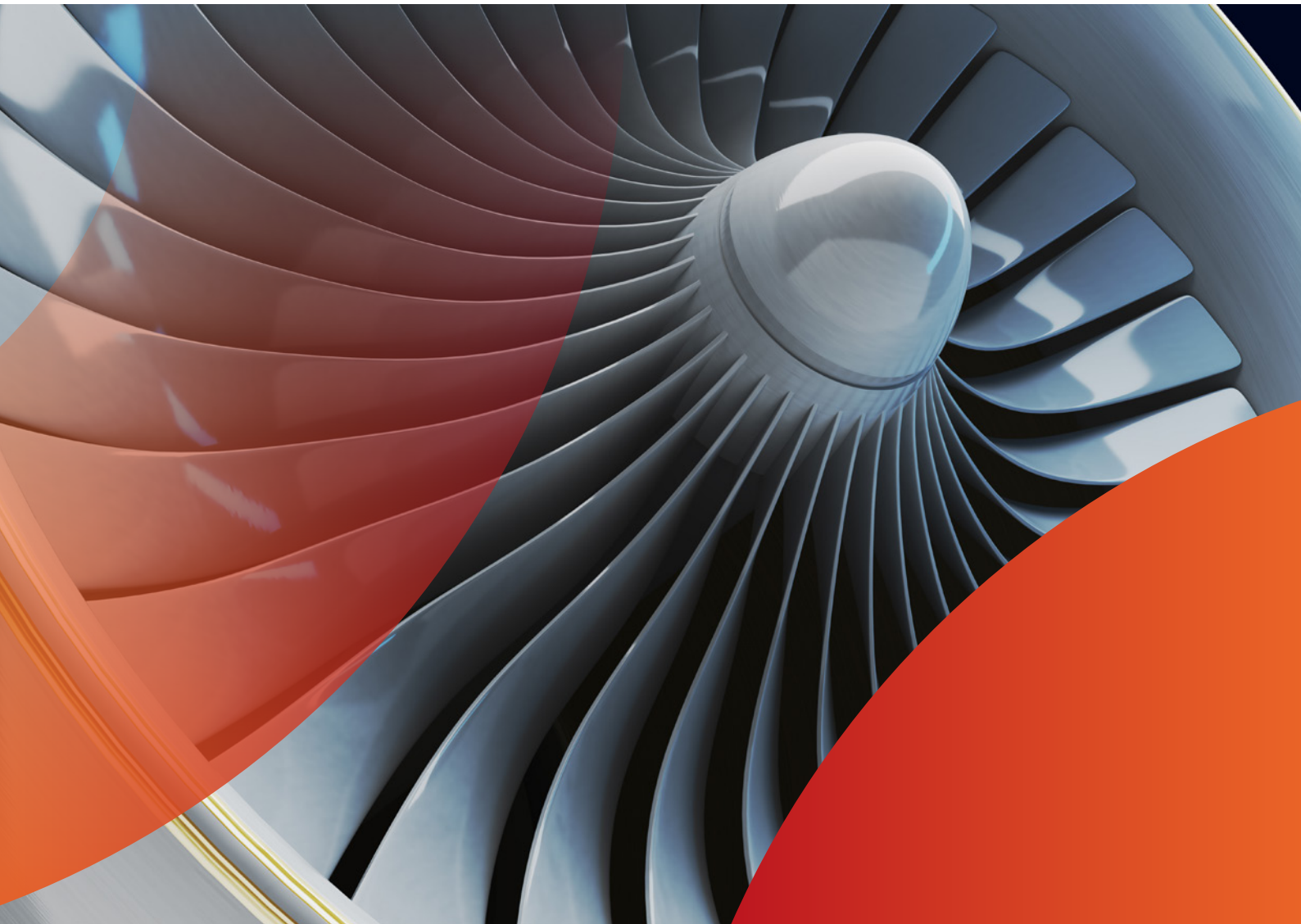
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Designs Information Kit *Australia*



Registering a design

A design registration protects features of appearance of a product (or part of it), namely its shape, configuration, pattern or ornamentation. A design registration does not provide protection in relation to the construction or function of a product. A design registration should be seen as limited to the visual appearance of a product. The Designs Act 2003 allows for the registration of designs of component parts of complex products, but those registrations will be subject to a "right of repair" infringement exemption.

An Australian design registration has effect throughout the whole of Australia.

In order to obtain a valid design registration, there should not have been any public or unrestricted disclosure of the design prior to the filing of the design application.

When applying for registration of a design, the application must be accompanied by representations of the product(s) illustrating the design features for which protection is required. Such representations are preferably drawings, but photographs may suffice.

The application will undergo a formalities check and the design will be registered if all formality matters are in order.

However, the owner of an unexamined design registration will be unable to commence infringement proceedings against an alleged infringer until the design registration has been certified following substantive examination.

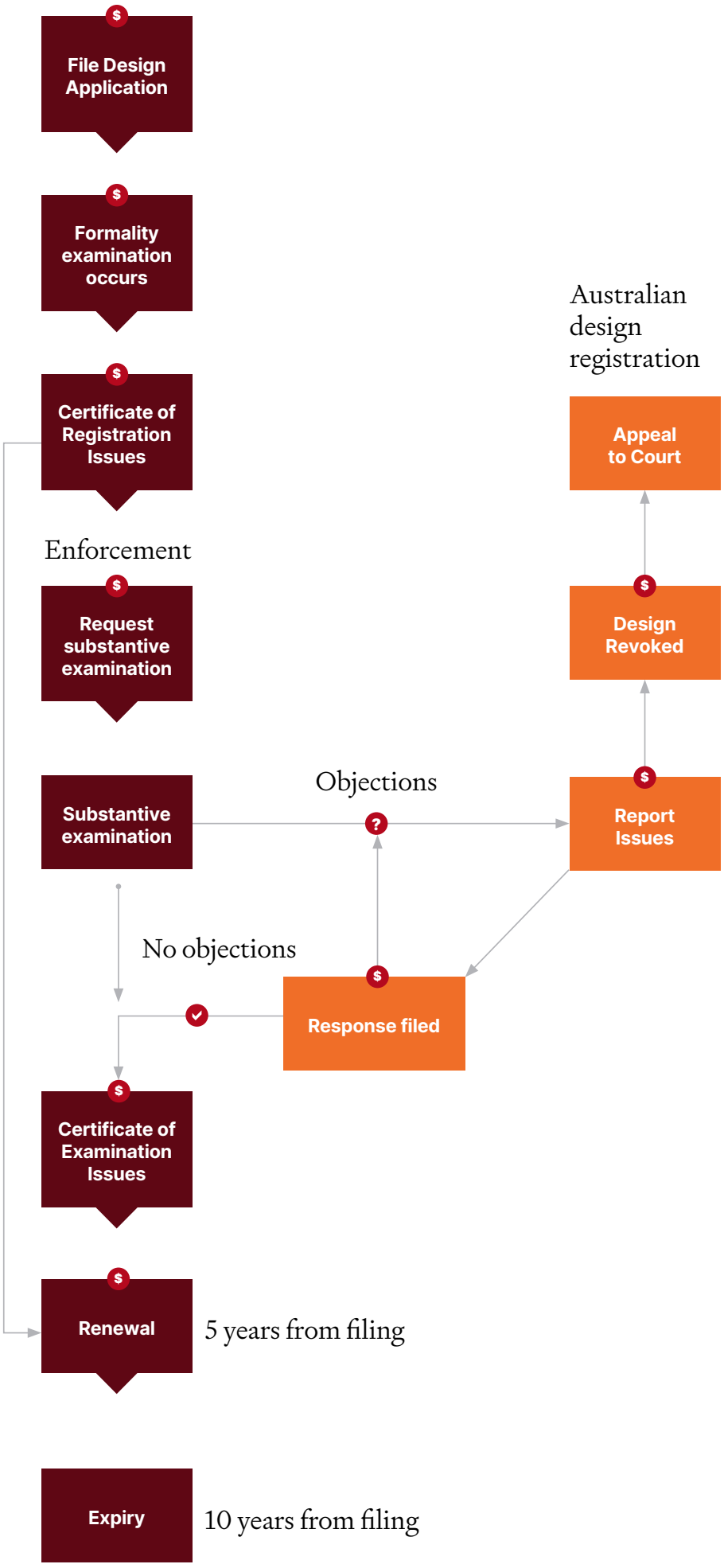
Substantive examination of the design can be requested at any time after registration. If the design is found to be "new and distinctive" and not "substantially similar in overall impression" to an earlier design, a Certificate of Examination will be issued. If not, the design registration will be revoked.

The total term of registration is 10 years subject to payment of a renewal fee five years from the date of the application for registration.

When applying for registration of a design, the application must be accompanied by representations of the product(s) illustrating the design features for which protection is required. Such representations are preferably drawings, but photographs may suffice.



Registering a design





Overseas design registration

Design registrations are granted by the Patent or Designs Offices of individual countries. Australian design registrations do not extend beyond Australia. Consequently, it is necessary to file design applications in other countries if overseas design protection is required. Overseas design applications are usually filed on a country-by-country basis. The European Community can be covered by a single Community Design Registration, however post Brexit a separate UK design will be required.

Checks should be made prior to filing to ensure that the appearance of the product constitutes a registrable design. For example, only ornamental designs are registrable in the United States of America.

Overseas design applications can claim priority from an Australian design application but the overseas design application must be filed within six months of the filing date of the Australian design application.

Copyright

Copyright protects "works" including literary, dramatic, artistic and musical works. Some of the "works" which can be covered by copyright include: computer programs; compilations such as anthologies, directories and databases; artistic works such as logos, drawings, cartoons, photographs, maps and plans, paintings and sculpture; dramatic works such as choreography, plays and mime; musical works including the music itself, separately from any lyrics or recording; cinematograph films; sound recordings; broadcasts; published editions (typographical arrangements of publishers).

Copyright protection in Australia is free and automatic. An original "work" is automatically protected from the time it is first written down or recorded some way. Generally, copyright lasts from the time the work is created until 70 years after the year of the creator's death. Once copyright has expired, anyone can use the material without permission.

The general rule under the Copyright Act is that the first owner of a copyright in a "work" is its creator.

There are, however, some exceptions to this general rule, which can be excluded or varied by agreement. For example, in the case of an employer/employee situation, the first owner of copyright will be the employer if the artistic work was created as part of the employee's usual duties. Business owners who commission works such as the design of a logo for a trade mark, software, or the design of a web page should have a written agreement about who will own the copyright. A written agreement can head off any misunderstanding or disagreement which can otherwise occur as to what the business can do with the work they have commissioned. In the absence of any agreement, the creator of the work usually retains ownership – not the business.

While assignments and exclusive licences must be in writing and signed by or on behalf of the copyright owner to be fully effective, it is good business practice to put all agreements relating to copyright into writing.

Industrial designers should further keep in mind that most designs cannot rely on dual protection under the Copyright Act and the Designs Act as they generally lose enforcement under the Copyright Act once commercialised.

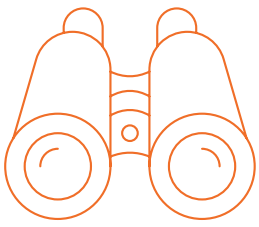
Registering copyright in overseas countries

Although copyright protection is automatic in any of the 165 countries that are party to the Berne Convention, formal registration of copyright is nevertheless available in some countries (e.g. China and the United States of America), and has its advantages.

Searches

Searches of worldwide literature should be carried out prior to taking any steps to register a design. Also, freedom to operate searches should be carried out prior to commercially using a design as it is possible that use of the design may infringe earlier intellectual property rights granted to a third party.

Searching is a specialist task and it is recommended that searches be carried out by a Patent Attorney.





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190+
IP professionals

25+
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10
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