

Standard patent vs innovation patent (Australia)

JAMES & WELLS

**CHAMPIONS
OF INNOVATION.**

Types of patent in Australia

The Australian patent system recognises two types of patent: standard patents and innovation patents. Both give the patent owner a monopoly on the rights to make, use and sell an invention, but they differ in the length of the monopoly and what is required to obtain it.

Standard patent:

- 20 year monopoly
- invention must be novel and involve an inventive step
- application must be examined before a patent is granted

Innovation patent:

- 8 year monopoly
- invention must be novel and involve an innovative step
- application is granted immediately but must be examined before the rights can be enforced

Benefits of innovation patents:

- Granted much faster than a standard patent and without undergoing examination, so time and costs to obtain protection are significantly less
- An innovative step is a lower standard than an inventive step. This means that many inventions that do not meet

the requirements for a standard patent can still be protected by an innovation patent

- It is very difficult for another party to show an innovation patent is invalid because only a minor improvement is needed to fulfil the innovative step requirement.

Benefits of standard patents

Provide protection for 20 years compared to only 8 years for innovation patents.

Reasons for filing an innovation patent:

- The invention is for a minor improvement that may not meet the requirements for standard patent protection
- The 20 year protection term of standard patents is not required, e.g. inventions in fast-moving technologies
- Quick, low cost protection is required. Note that the costs of enforcing an innovation patent may be comparable to a standard patent

Concerns with innovation patents

- The lower cost of obtaining rights should be carefully weighed up against the 12 year shorter protection term
- Details of the invention will be available to competitors much quicker when an

innovation patent is filed, meaning they will have more time to utilise the teaching of the patent and/or develop work arounds

In many cases, it is advantageous to file both standard and innovation applications to get the benefits of each.

A standard patent application can be converted into an innovation patent application and vice versa. If a standard patent application is proving difficult to get through examination, converting to an innovation patent application may be worth considering.

If you are considering applying for patent protection in Australia, it is important to discuss the details of your invention and business strategy with an IP specialist to ensure maximum benefit can be taken from the intellectual property system.