



Law Council  
OF AUSTRALIA

*Business Law Section*

Mr Philip Noonan  
Director-General  
IP Australia  
P O Box 200  
Woden ACT 2606  
Via email: [philip.noonan@ipaaustralia.gov.au](mailto:philip.noonan@ipaaustralia.gov.au)

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Dear Philip,

### **Submission on the Objective Connect System**

On 12 April a note was published on the IP Australia website announcing that an electronic document management system (**EDM**) had been acquired and that the system, "...a web based, secure, file sharing tool called Objective Connect" had been introduced. The new system is described as having been introduced to assist in the submission of documents and evidence related to opposition proceedings and the distribution of material by IP Australia.

The new system was introduced without consultation with interested stakeholders and without warning to users of the trade mark registration system.

The Intellectual Property Committee (**IPC**) of the Business Law Section of the Law Council of Australia has considered the explanatory material relating to the Objective Connect system which has been published by IP Australia and it has a number of concerns.

1. The Trade Marks User Guide published as part of the online notice on Objective Connect states that, at the beginning of an opposition proceeding, IP Australia will ask each party to nominate an email address to be used for submitting and filing evidence. It goes on to say that the opponent must provide an email address when filing the Statement of grounds and particulars and the applicant must provide an email address when filing the Notice of Intention to Defend. The IPC questions the basis on which IP Australia considers that it is entitled to impose this obligation on the parties to opposition proceedings. There does not appear to be any provision in the amendments made to the Trade Marks Regulations by the Raising the Bar regulations which deals with this matter. What will be done if a person does not provide an email address because he/she does not have one?

GPO Box 1989, Canberra  
ACT 2601, DX 5719 Canberra  
19 Torrens St Braddon ACT 2612

Telephone +61 2 6246 3788  
Facsimile +61 2 6248 0639

Law Council of Australia Limited  
ABN 85 005 260 622  
[www.lawcouncil.asn.au](http://www.lawcouncil.asn.au)

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*Director*: Carol O'Sullivan || email [carol.osullivan@lawcouncil.asn.au](mailto:carol.osullivan@lawcouncil.asn.au)

2. In the Guide it is said that “All evidence in an opposition proceedings must be filed via the Objective Connect Share” which has been created for that opposition and “We [IP Australia] will specify the documents that must be filed and accessed using the EDM system as well as any other formality requirements”.

The IPC believes that the requirement that documents must be filed and accessed using the EDM system is inconsistent with the provisions of the Trade Marks Act 1995. Section 213 of the Trade Marks Act, which was amended by the Raising the Bar Act, provides that

A document may be filed at the Trade Marks Office by:

- (a) delivering the document to the Trade Marks Office or any sub-office of the Trade Marks Office (if any) either personally or by post; or
- (b) any other prescribed means.

If evidence is filed at the Trade Marks Office, or any sub-office, by personal delivery or by post the provisions of s213(a) clearly sanction that filing. The IPC understands that it has been suggested that reg 5.3 of the Trade Marks Regulations empowers the registrar to specify how documents are to be filed and that includes specifying the method by which the document is provided. Even if reg 5.3 was capable of being read as authorising the use of Objective Connect the IPC believes that it clearly cannot prevail over the clear wording of s213 of the Trade Marks Act.

3. The IPC also questions whether evidence already filed via Objective Connect can be said to have been validly filed. There is no express provision in the Trade Marks Act, as amended, or the Trade Marks Regulations, as amended, which refers to the Objective Connect system. While electronic communications are utilised extensively by users of the Trade Marks system in their dealings with IP Australia, the foundation or basis for the practice is permissive; it does not purport to shut out other methods of communication or prescribe a particular form of communication. In order for a means to be “prescribed” the IPC believes that it would need to be sanctioned by either the Trade Marks Act or the Trade Marks Regulations. The IPC does not consider that a notice issued by IP Australia is sufficient and does not amount to prescribing any method. Further, by insisting that documents are filed only in accordance with the notice, IP Australia is acting inconsistently with the legislation which specifically permits filing by any of the means in s213. If a party were to challenge the filing of evidence already filed via Objective Connect, it would be open to a court to hold that the evidence was not “filed”.
4. One of the justifications given for the introduction of Objective Connect is that “*There will be an improvement to how accessible evidence and documents in oppositions is, the information will be accessible from devices with internet and browser capability*”. A very high percentage of applications for patent protection are filed by professionals and it is possible that an EDM system might offer benefits to such users. In the case of applications for trade mark registration, a high percentage of applicants are self filers or SMEs. The IPC questions whether such applicants will necessarily benefit from the new system. Many people still do not have ready access to electronic methods of communication. This means that the requirement that parties must use Objective Connect does not seem to accord

with the statements regularly made by IP Australia that it supports and assists individual users of the IP system.

If you have any questions regarding this submission, in the first instance please contact the Committee Chair, Richard Hamer, on 03-9613 8853 or via email: [richard.hamer@allens.com.au](mailto:richard.hamer@allens.com.au)

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Frank O'Loughlin', with a stylized flourish at the end.

**Frank O'Loughlin**