

Patent opposition in Australia.

Opposition is the mechanism most commonly used to allow an interested party to challenge the validity of a patent application prior to grant, in proceedings conducted before the Commissioner of Patents.

The procedures set out below and the accompanying diagram focuses on this form of opposition, however they also apply to less frequently used oppositions such as opposition to an amendment or an extension of time application.

Extensions of the time limits within the procedures may be obtained however such requests may be objected to by the other party and can result in the need for a hearing to deal solely with the request, often delaying proceedings. When evidence is served upon each party in opposition proceedings, the provider of that evidence must also file the original evidence with the Patent Office.

Notice of Opposition

The Notice of Opposition is a formal document lodged at the Patent Office within 3 months from the date of advertisement of acceptance of the application in the Australian Official Journal of Patents. A copy of the notice must also be provided to the patent applicant or his Australian representative as soon as possible thereafter.

Statement of Grounds and Particulars

The opponent is then required to provide to the applicant a statement of grounds and particulars of the opposition within 3 months of filing the Notice of Opposition. This document typically sets out the basis of the opposition in detail and specifies the grounds relied upon by the opponent.

Evidence in Support

The opponent then has 3 months to provide to the applicant evidence in support of the opposition. This evidence must only relate to the particulars as specified in the statement of grounds and particulars.

Evidence in Answer

The applicant then has three months in which to provide evidence in answer to that supplied by the opponent if desired. If served with evidence in answer, the opponent has 1 month within which to serve evidence in reply or to notify of their intention to serve such evidence.

Hearing

Once the evidence stages are complete, the matter is set down for a hearing before a delegate of the Commissioner of Patents. The hearing is an informal procedure that allows each party a fair opportunity to present its case. The Delegate will then consider all submissions and evidence and send a written, reasoned decision to both parties including an award of costs. Either party may file an appeal against this decision to the Federal Court.

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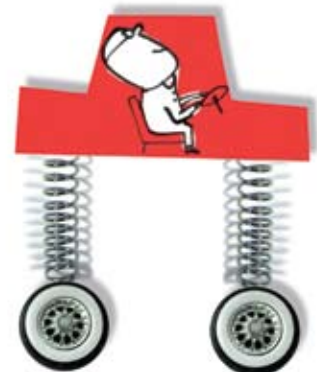
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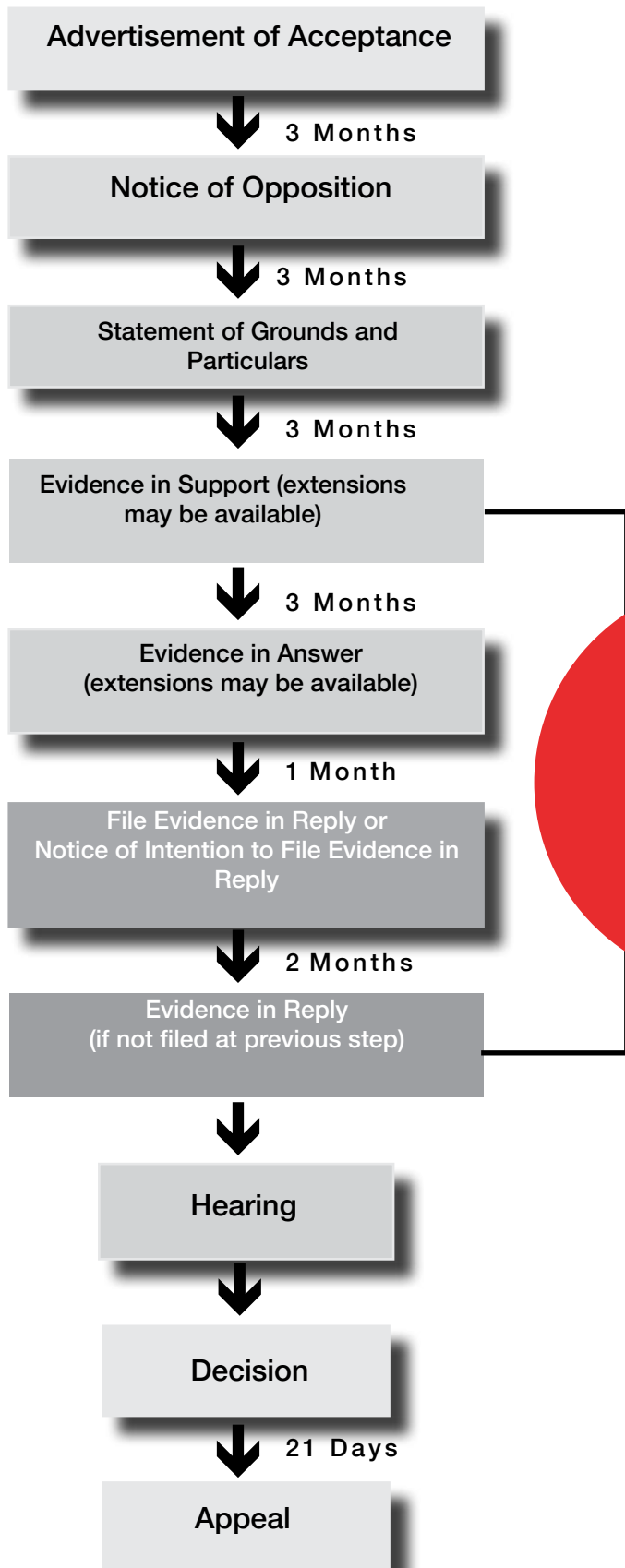
Patent
Opposition

The diagram overleaf shows, in a simple way, the process for patent opposition.

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Note
Evidence is usually in the form of a statutory declaration, with relevant documents attached as exhibits

