

# Appraisal Report

## File/Document ID

<b>Date</b>	July 2009
<b>Public Office:</b>	Ministry of Economic Development, Intellectual Property Office of New Zealand (IPONZ)
<b>Contact:</b>	[Name Removed], IP Manager Business Development Business Services Branch
<b>Authors:</b>	[Name Removed]
<b>Disposal Type:</b>	Continuing class based schedule
<b>Coverage:</b>	Central office situated in Wellington.
<b>Scope:</b>	Hard copy and electronic design and patent records created by IPONZ. Administrative records will be sentenced under the relevant GDAs 1, 2, 3 and 4.

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## 1 Executive Summary

The records covered in this report encompass electronic and hardcopy records for the design and patent processes carried out by the Intellectual Property Office of New Zealand (IPONZ). The exception being the administrative records covered by General Disposal Authorities (GDAs) 1, 2, 3 and 4.

This appraisal combines 2 previous schedules, due to expire in early 2009, into a single continuing class based schedule. The previous disposal schedules were OP 99/32 for design files and OP 98/80 for patent files. In order for IPONZ to continue to dispose of IPONZ records, the two original appraisal reports and schedules have been reviewed before the new schedule and report were created.

The disposal criteria in the Archives New Zealand Appraisal Standard were applied. The detailed disposal schedule is attached as an Appendix.

It is estimated that 60% of the design certificates would be "home grown" files. The estimated accretion rate for transfer as present quantities is 5 linear metres a year.

## 2 Appraisal Circumstances

This appraisal combines 2 previous schedules, due to expire in early 2009, into a single continuing class based schedule. The previous disposal schedules were OP 99/32 for design files and OP 98/80 for patent files. In order for IPONZ to continue to dispose of IPONZ records, the two original appraisal reports and schedules has been reviewed before the new schedule and report were created.

## 3 Agency Information

<i>Agency Code:</i>	ABPJ
<i>Agency name:</i>	Intellectual Property Office of New Zealand, Business Services Branch, Ministry of Economic Development
<i>Physical location(s)</i>	Wellington
<i>Year established:</i>	1996
<i>Year disestablished:</i>	-

### 3.1 Agency Background

IPONZ is a business unit of the Ministry of Economic Development, formerly the Ministry of Commerce and was established in 1870 as the New Zealand Patent Office.

IPONZ is the government agency responsible for the granting and registration of intellectual property rights, specifically patent, trade mark, design and plant variety rights. Innovation and creativity are important elements in gaining a competitive edge in the marketplace and for many business ventures intellectual property is one of their most important assets.

IPONZ administers the Patents Act 1953, the Trade Marks Act 2002, the Designs Act 1953 and the Plant Variety Rights Act 1987. These Acts place statutory obligations on the Office and the Commissioner of Patents, Trade Marks, Designs and Plant Variety Rights in relation to the examination and registration or grant of intellectual property rights. The Office also maintains registers of these rights and interests.

### 3.2 Patents

*A patent is a grant by the Crown of monopoly to the patentee. This monopoly has a maximum length of twenty years, although the period can be less if the renewal fees are not paid at regular intervals.*

IPONZ has maintained a comprehensive wealth of information relating to patents due to its interpretation of the statutory requirements of the 1953 Patents Act and the 1954 Patents Regulations.

The Regulations and the Act provide for the creation of registers (Regulations s. 125) and Indexes (Act s. 112). Section 129 of the 1954 Patents Regulations provides for a public right of inspection of the patent records:

*129. There shall be open for inspection at any convenient time,*  
*(a) The register;*  
*(b) Copies of deeds, licences, and other documents affecting the proprietorship in any patent, or in any licence thereunder, which are supplied to the commissioner under regulations 127 and 128 hereof*  
*(c) Specifications and abridgements of specifications (New Zealand and foreign) filed in the Patent Office library; (d) The register of patent attorneys; and (e) Except as otherwise provided in the Act or these regulations, all applications, specification, drawings, requests, notices, and other documents filed, made, or given under the Act or these regulations in respect of any patent, any application for patent, or in any proceedings relating to such matters.*

## 4 Recordkeeping Information

### 4.1 Patent filing process

To understand the issues pertaining to this appraisal it is necessary to first examine the record keeping processes to which the patent files are subject at the Intellectual Property Office and the patent material that Archives New Zealand has previously accepted for transfer.

The owner of an invention makes a patent application to protect the idea for a period within which he or she may exclusively exploit it on a commercial basis.

To do this the application is submitted with a patent specification (a detailed description of the idea, what was unique about it, and how it worked) and any accompanying drawings.

An entry is made in the Electronic Register of Patents and a case file is created.

Pressure of storage space led the Office to implement a 'purging' regime on the closed (out of patent) files that they held. The authority for this purging of the patent files stems from the 1954 Patent Regulations, s.170 Destruction of Records, which was endorsed by the Acting Chief Archivist in correspondence dated 6 April 1959.

In the past all patent files have been subject to the removal of papers under section 170 of the regulations prior to 'enveloping'. Those that have been retained include the specifications and original drawings (if any), a copy of the patent deed, a copy of the register entry, confidential examiners reports, any assignments, agreements or licences, any rulings by the Commissioner.

Since the 1999 appraisal was conducted this practice has ceased and a distinction is made between "home grown patent files" and those filed under international co-operation agreements and by foreign businesses. Australian and Canadian practice is to only preserve those patent files unique to their citizens and this selection criteria was also adopted within the New Zealand context.

An issue that emerged with the destruction of all those 'non-home-grown' patent files is that of the legal requirement of access for searching purposes to the Confidential Examination Reports. The Confidential Examination Report is an evidential record of the search undertaken by the patent examiner when verifying the patent's validity. Various sections of the Patents Act 1953 relating to Search for anticipation... s.13, Opposition... s.21, and Revocation... s.41 and s.42 require the search of previously granted patents for a period of fifty years prior to the date of filing.

*Subject to the provisions of section 12 of this Act, the examiner to whom an application for a patent is referred under this Act shall make investigation for the purpose of ascertaining whether the invention, so far as claimed in any claim of the complete specification, has been published before the date of filing of the applicant's complete specification in any specification filed in pursuance of an application for a patent made in New Zealand and dated within 50 years next before that date.*

IPONZ now ensure that the Confidential Examiners Reports are removed from the 'non home-grown' files and retained by them for the fifty year statutory period after which they will be destroyed.

## **4.2 Design Certificate Files**

**Start date:** 1994

**End date:** Ongoing

**Legislation:** Designs Act 1953

### **4.2.1 System and format**

Under the Designs Act 1953 IPONZ has the responsibility of examining and registering new and unique designs within New Zealand. Design files are created in the discharge of this function.

Post 1991 the register for design certificates was assumed by the AREV database, developed by IPONZ. In 1999 the AREV database was replaced with the IPOL system. The IPOL system can manage both the data and physical and electronic documents for design certificates. IPOL has been made available for online searching of design certificates via the IPONZ website [www.iponz.govt.nz](http://www.iponz.govt.nz).

### **4.2.2 Description**

A unique file is created with every design application, onto this file the following are attached; application form, authorisation of agent, examination Sheet, correspondence, filing receipt, statement of novelty, and drawings of the design.

### 4.2.3 Precedent

The previous schedule for IPONZ: OP 99/32

## 4.3 Patent Registers

**Start date:** 1861

**End date:** Ongoing

**Legislation:** Patents Act 1953

### 4.3.1 System and format

The *Applications for Letters Patent Register* (1861-13 October 1997) and the *Patents Registers* (1861 to current) are the primary registers for patents. Until 1988 these were managed using hard copy registers where records were stored chronologically i.e. entries as patent was granted. The early numbered registers are large cloth covered volumes (approx 500mm x 400mm). The later numerical ones (c. 1950) are variants of ring binders (approx A5).

In 1991 most of the patent register functions were transferred to the AREV database. In October 1999 the AREV system was replaced with the IPOL system to register, track, and trace patent applications. IPOL has been made available for online searching of patents via the IPONZ website [www.iponz.govt.nz](http://www.iponz.govt.nz).

### 4.3.2 Description

The patent register provides contextual information about a patent that inform us of when the application was made, the inventor, its success (or otherwise), renewals, and when the patent ceased. Without this supporting information the value of the patent specifications by themselves are severely compromised. For these reasons their retention for transfer to Archives New Zealand once they are no longer required by IPONZ is recommended.

### 4.3.3 Precedent

The previous schedule for IPONZ: OP 98/80

## 4.4 Patent specifications

**Start date:**

**End date:** Ongoing

**Legislation:** Patents Act 1953

### 4.4.1 System and format

When a patent application is submitted an entry is made in the *Register of Patents* (from which the next available running number is drawn and assigned to the transaction) and a case file is created.

A critical distinction is made between 'home-grown patent files' and those filed under international co-operation agreements and by foreign businesses. Less than 12% of the 4050 complete specifications filed in the 2008/09 year were by New Zealand applicants. This distinction is based upon whether the applicant's physical address was in New Zealand at the time of the application's sealing or registration.

### 4.4.2 Description

The case files eventually come to consist of a copy of the patent register sheet, one set of the specifications and drawings, the examiner's search report for prior inventions of a similar type, and other correspondence between the Office and the applicant arising from the examiner's report and post-examination matters, filing fees, a copy of the patent deed renewal reports, etc.

Once the specifications have been published<sup>1</sup> the specifications and drawings are filed waiting for their retention period to expire.

#### 4.4.3 Precedent

The previous schedule for IPONZ: OP 98/80

## 5 Methodology

An appraisal report and schedule were developed for the IPONZ records in 1999. The pre-1999 files identified in the schedule (other than the application for letters Patent Register) have subsequently been transferred to Archives New Zealand and have therefore not been included in the new schedule.

The retention and disposal schedule was developed based on the existing schedule, by using established consultation mechanisms, and with input from IPO staff. The established Patent & Designs Technical Focus Group represents all the IPO's stakeholders has been involved in extensive consultation on the IPO business processes recently and includes representatives from:

*Ministry of Economic Development*

*New Zealand Specialist Legal and Patent Firms – [Names Removed]*

*Australian Specialist Legal Firms – [Name Removed]*

The schedule supports the processes agreed by the stakeholder group, the Intellectual Property Office, and the wider Ministry. It was reviewed by the schedule owner and managers responsible for particular functions.

### 5.1 Scope of schedule

#### 5.1.1 Inclusions

- Existing hard copy and electronic corporate non-current records.

#### 5.1.2 Exclusions

- Records covered by the General Disposal Schedules.

## 6 Relevant Precedent

*Previous Disposal Authorities:* OP 99/32 and OP 98/80

*Overseas Precedent* IP Australia: 2004/00068493

## 7 Disposal Criteria

The disposal criteria in the Archives New Zealand Appraisal Standard Recommendations were used to develop the retention and disposal schedule. The criteria used and their relevance is listed below:

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<sup>1</sup> New Zealand Patent Office fact sheet

<b>The criteria for recommending the permanent retention of records as archives are:</b>	<b>Criteria Number</b>
Document the performance of a substantive function of IPONZ	A1
Records that substantially contribute to the knowledge and understanding of New Zealand's history and communities	A2
Are a summary version of records that fulfils criteria for permanent retention	A3
<b>The criteria for recommending the destruction of records are:</b>	
Concern routine operational matters only	D1
Records of patents held by other countries and that are filed under international co-operation agreements and by foreign businesses	D2
Records contain information provided and used for reference or 'for your information' purposes only	D3
Items of long-term value to IPONZ due to legislative requirements (section 170 of the 1954 patent Regulations), but not of archival value	D4

## 8 Record Class Information

The records offered for approval in this retention and disposal authority have been broken down into 3 classes. Class descriptions and evaluations are outlined below.

### 8.1 Design Certificate Files

Class Title:	Design Certificate Files
Class number:	1.0
Class Description:	Records created during the registration of new and unique designs within New Zealand.
Value:	The design files provide an evidential record of one of the major functions of IPONZ. Providing a record of industrial design and development within New Zealand they have long term research value to genealogical research.

#### Recommended for retention as public archives

#	Sub-classes	Description	Reason
1.1	Design certificate files – home-grown	Design certificate files that relate to "home grown" designs. The criteria for home grown files is that the permanent address of the applicant is within New Zealand.	A1, A2

#### Recommended for destruction

#	Sub-classes	Description	Reason
1.2	Design certificate files – non home-grown	Other design certificate files that do not qualify as being "home grown".	D2

### 8.2 Patent Registers

Class Title:	Patent Registers
Class number:	2.0
Class Description:	The patent registers provides contextual information about a patent that inform when the application was made, the inventor, its success (or otherwise), renewals, and when the patent ceased.

Value:	Information the provides value of the patent specifications by providing contextual information about the patent without which the specification files are severely compromised.
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Recommended for retention as public archives

#	Sub-classes	Description	Reason
2.1	Inventors and Applicants Card Indexes (1905-1995)	The card register set used to track the applicants and inventor, its success (or otherwise), renewals, and when the patent ceased.	A1, A2
2.2	Patent Registers - Applications for Letter Patent Register (1902 - 1997)	The set of register volumes consisting entirely of patent application letters which ceased to be used in 1997.	A1, A3

Recommended for destruction

No records in this class are recommended for destruction.

### 8.3 Patent Specification

Class Title:	Patent Specification
Class number:	3.0
Class Description:	The case file for a patent application consisting of the patent register sheet, one set of the specifications and drawings, and any other documentation related to the patent.
Value:	The patent records of a nation document its intellectual history of invention and creation. They are an important evidential record not only of the functions of IPONZ but also of a developing and changing society. There is also strong research potential for the material ranging from the analysis of technological development and innovation in New Zealand.

Recommended for retention as public archives

#	Sub-classes	Description	Reason
3.1	Patent Specification – home-grown	Patent specification files that relate to "home grown" designs. The criteria for home grown files is that the permanent address of the applicant is within New Zealand.	A1, A2

Recommended for destruction

#	Sub-classes	Description	Reason
3.2	Patent Specification – non home-grown	Patent applications filed under international co-operation agreements and by foreign businesses.	D2
3.3	Patent Specification - Confidential Examination Reports extracted from "non home-grown" files.	Examination reports removed from "non home grown" patent specification files before destruction and held by Patent Office (as per section 170 of the 1954 Patent Regulations).	D4
3.4	Patent Specification - copies held by library and for DR purposes	Copies of the patent specification file held as a library reference set and for disaster recovery purposes.	D1, D3

## 9 Access Recommendations

[Removed]

## 10 Transfer Arrangements

[Removed]

Refer to any sentencing guidelines accompanying this report for specific recommendations:

- Records must be kept for the minimum period given
- Records may be destroyed at any point once the minimum retention periods have passed. Records do not have to be destroyed, the agency may keep them for longer if still required.

**This authority is valid for a period of 10 years from date of signing, unless previously agreed with the Chief Archivist.**

## **11 Appendix 1 – Retention and disposal schedule**