Australia Patent Country Report 2026

Reporting period: 1 November 2025 to 25 September 2026
Prepared for: Patents Standing Committee, APAA Conference, Hong Kong, November 2026

Overview

The statistics reported herein are derived from the Australian IP Report 2026 issued by IP Australia.

Australian patent filings remained relatively stable in 2025, with **30,348** standard applications, down 0.5% from 2024, while grants rose 1.4% to **19,555**. Resident filings increased 9%, direct Australian filings gained share at the expense of PCT national phase entries, China-origin filings continued to grow, and provisional filings rose sharply. Life sciences remained dominant, but energy, transport and industrial technologies strengthened.

The most important legal developments were judicial rather than legislative:

- **Computer-implemented inventions:** the High Court declined special leave in *Commissioner of Patents v Aristocrat Technologies Australia Pty Ltd* [2026] HCADisp 15. IP Australia subsequently revised its examination manual and later published further revisions following public consultation.
- **Best method:** *The NOCO Company v Brown and Watson International Pty Ltd* [2026] FCAFC 44 makes each divisional application vulnerable by reference to the best method known when that divisional is filed, not merely when the parent or PCT application was filed.
- **Patent term extension:** *Otsuka Pharmaceutical Co Ltd v Sun Pharma ANZ Pty Ltd* [2025] FCAFC 161 held that pharmaceutical formulation claims are not eligible for an extension of term. The High Court heard the appeal in June 2026 but had not delivered judgment by the reporting date.
- **Support, sufficiency and amendments:** *Nalco Company v Cytec Industries Inc* [2026] FCAFC 72 confirmed post-*Raising the Bar* for amendment.

Source and scope note. Statistics are based on calendar-year 2025 data in IP Australia's *Australian IP Report 2026*. Legislative status is stated at 25 September 2026.

1. Recent Patent Statistics

1.1 Filings and grants

Metric	2023	2024	2025	2025 movement
Standard patent applications	31,530	30,487	**30,348**	-0.5%
Standard patent grants	Not separately used here	Approximately stable after substantial 2024 growth	**19,555**	+1.4%
Australian-resident standard applications	Not stated in current report extract	2,578	**2,810**	+9.0%
Non-resident standard applications	Not stated	27,909	**27,538**	-1.3%

Australian residents increased their share from 8.5% to **9.3%**, while non-residents still represented **90.7%** of standard complete filings. There is a view that the increase in Australian residents relates to self-filed, AI-generated applications.

1.2 Filing routes

In 2025, **20,248 applications, or 66.7%**, entered through the PCT national phase, while **10,100, or 33.3%**, were direct filings. The PCT share fell from 69.6% in 2024; PCT entries declined by 980 applications while direct filings increased by 841.

IP Australia attributes the change partly to reduced US-origin activity, for which PCT use is prevalent, and stronger Australian and Chinese filing, where direct filing is more common.

1.3 Applicant origin and international collaboration

The United States remained the largest source of standard applications at **40.8%**, but US-origin filings fell 5%. China rose 13.4% to **9.7%**, ahead of Australian residents at **9.3%**. Singapore and Finland also recorded strong growth, while Belgian and Spanish filing volumes declined.

1.4 Technology distribution

2025 technology field	Applications	Share or trend
Pharmaceuticals	3,715	12.2%
Medical technology	3,331	10.9%
Biotechnology	3,073	10.1%
Organic fine chemistry	**1,588**	**5.2%**
Civil engineering	1,550	5.1%

Largest Technology Trends

Computer Technology declined by 10.1%

Electrical machinery, apparatus and energy increased by 12.8%

Transport increased by 9.1%

1.5 Provisional and leading-applicant activity

Provisional applications increased **58.1% to 6,867**, their highest level since 2008. Individual applicants accounted for nearly half of provisional filings; 63% were first-time filers and 52% were self-represented. The change is believed to be associated with lower entry barriers, including automated drafting and searching tools.

Aristocrat Technologies was the leading resident filer with **123** standard applications. Major international filers included LG Electronics, Huawei, Caterpillar, Regeneron Pharmaceuticals and Nestlé. The rankings include original and divisional filings.

2. Changes in Patent Laws and Regulations

2.1 Computer-implemented inventions

Following the High Court's refusal of special leave in *Aristocrat*, IP Australia revised its Patent Manual on 16 March 2026, consulted until 17 May, and published a further revised version on 3 July 2026.

The Manual Patent Examination Manual provides a framework for determining if a suitable artificial state of affairs is present.

For claims relating to software only, or where physical features are standard, known features of a computer including a processor, additional factors are to be considered.

Examiners first characterize the claimed invention, considering all integers of a claim and their interoperation and what the specification describes as being the invention.

The additional factors for consideration include:

- Does the computerised product or system work in an improved or altered manner, i.e. better or differently?
- Does a relevant technical effect occur outside a computerised product or system, or is a technical problem outside the computerised product or system solved?
- Whether a technical problem is solved with a computerised product or system.

2.2 PCT search options

From **1 March 2026**, Australian PCT applicants may select the EPO or IPOS as ISA and IPEA, in addition to IP Australia and the Korean Ministry of Intellectual Property. The EPO arrangement is a two-year pilot; IPOS is an ongoing arrangement. An EPO search can remove the supplementary European search requirement and, where EPO Chapter II examination is requested, provide a 75% reduction in the European examination fee. IPOS may be particularly useful where Chinese-language prior art is important.

2.3 Excess claims and filing procedures

For examination requests filed from **1 July 2026**, IP Australia replaced the forecast six-month pre-examination reminder with a defined three-month period after the examination request. Examination ordinarily will not begin within that period, except for expedited or divisional applications.

3. Notable Court Decisions Related to Patents

3.1 Overview and procedural status

Decision	Principal issue	Result and status at 25 September 2026
Commissioner of Patents v Aristocrat Technologies Australia Pty Ltd [2026] HCADisp 15	Patentable subject matter	Special leave refused; 2025 Full Court judgment stands
Otsuka Pharmaceutical Co Ltd v Sun Pharma ANZ Pty Ltd [2025] FCAFC 161	PTEs; formulation claims	Special leave granted; appeal heard; judgment reserved
The NOCO Company v Brown and Watson International Pty Ltd [2026] FCAFC 44	Best method; inventive step; priority	Appeal dismissed; no further appeal sought
Nalco Company v Cytec Industries Inc [2026] FCAFC 72	Support, sufficiency, amendments	Original claims failed; narrower amendment allowed
Orikan Group Pty Ltd v Vehicle Monitoring Systems Pty Ltd (No 2) [2026] FCA 407	Estoppel, sufficiency, best method, infringement	Patent invalid and not infringed; appeal reported pending

3.2 Patentable subject matter:

On 5 February 2026, all seven High Court justices refused the Commissioner special leave. The Court said there was insufficient reason to doubt the Full Court's correctness because it had applied established manner-of-manufacture principles and reached a clear, unanimous conclusion on characterisation. See CoP v Aristocrat Techn Aust PL (S153-2025) [2026] HCADisp 15.pdf

The result is significant even though it is a special-leave disposition. The question on patentability whether the properly characterised combination produces an artificial state of affairs and useful result rather than merely manipulating an abstract idea. As discussed above, the Patent Manual has been updated.

3.3 Pharmaceutical term extensions:

In *Otsuka Pharmaceutical Co Ltd v Sun Pharma ANZ Pty Ltd* [2025] FCAFC 161, delivered 1 December 2025, the Full Court considered controlled-release aripiprazole formulations. It overturned the first-instance findings that relevant claims failed clarity and claim-definition requirements, but held that the extension of term was invalid because "pharmaceutical substance" in section 70 focuses on the active substance producing the therapeutic effect, not a formulation, delivery system or dosage form containing a known active pharmaceutical ingredient (API).

As a result:

- Patents claiming formulations comprising an API and excipients may no longer be eligible for a patent term extension (PTE).
- Existing PTEs granted on the basis of a pharmaceutical formulation may be vulnerable to challenge.

Special leave to appeal the decision was granted by the High Court in March 2026. An decision is expected in mid- to late 2027.

3.4 Priority & Best method:

The NOCO Company v Brown and Watson International Pty Ltd [2026] FCAFC 44 decision concerned portable lithium battery jump starters. The Full Court upheld findings of lack of inventive step, adverse priority conclusions and non-infringement of claims.

One of the more notable aspects of the decision concerns the loss of priority. The Full Court upheld the primary judge's conclusion that the asserted claims were not entitled to the priority date of the earlier PCT application. The PCT disclosed a portable battery jump starter in which a FET switch was used to control the connection between the internal power supply and the vehicle battery. The Full Court considered that the FET was consistently presented as an essential feature, and the PCT did not disclose other types of power switches.

In the subsequently filed divisional patents, however, the claims had been broadened. In particular, the claims were no longer limited to a FET switch, but instead encompassed any type of "power switch". The PCT did not disclose the broader concept of using other types of power switches, such as electromagnetic switches. The Court therefore determined that the asserted claims were not entitled to the PCT

priority date. NOCO had conceded that claims which were not entitled to that priority date lacked novelty, so those claims were invalid on that basis.

In relation to the Best Method discussion, the Court upheld Brown and Watson's notice of contention on best method. For a divisional, section 40(2)(aa) is assessed by reference to the applicant's knowledge when that divisional complete specification is filed. Each divisional is a separate application and cannot simply rely on disclosure adequate at the parent or PCT filing date.

No further appeal was sought, so *NOCO* is the controlling appellate authority.

Based on the outcome of this decision, Australian divisional applications should be reviewed at the time of filing to ensure that the specification discloses the best method known to the applicant at that time, including any better method developed or identified since filing the parent application.

This creates practical challenges, particularly where divisional applications are filed at relatively short notice, including where a divisional is filed towards the end of the 12-month acceptance period simply to maintain pendency.

Moreover, any updating of the specification must be carefully considered against the potential priority consequences of introducing additional material, particularly where that material is relevant to the subject matter ultimately claimed.

A best-method deficiency in a parent application may potentially be remedied by filing a divisional application containing an appropriately updated disclosure. Accordingly, for important patent families, maintaining a pending Australian application may provide useful strategic flexibility, including an opportunity to address best-method issues through a further divisional if necessary.

There are also calls for reform of Australia's best-method requirement. IP Australia's Policy Register identifies the proposal to repeal the best-method requirement as "Identified for action" and assigns it a "High" priority. The register notes that few other jurisdictions retain a best-method requirement and identifies further consultation on whether the requirement should be retained or repealed.

3.5 Support, sufficiency and amendment

Nalco Company v Cytec Industries Inc [2026] FCAFC 72 concerned a patent application for using silane-based small-molecule reaction products to reduce aluminosilicate scale in the Bayer process. The key issues were claim construction, support/sufficiency under ss 40(2)(a) and 40(3), and whether Nalco should be permitted to amend its claims during the Federal Court opposition appeal.

The Full Court upheld the finding that the existing claims lacked support and sufficient disclosure. They were broad enough to encompass a product mixture containing only a

particular identified type of small molecule (along with other non-identified molecules/polymers), but the specification did not teach the skilled person how to produce a composition comprising a specific identified small molecule in that way.

Nalco sought to overcome the problem principally by deleting “at least one” and “selected from” and restructuring the claims so that they were directed to specified small molecules “within a product mixture formed from” the identified reactants.

The majority held that the amended claims should be construed, in light of the specification and common general knowledge, as requiring the identified small molecules to form part of a complex reaction product mixture that inevitably also contained many other small molecules and polymers. On that construction, the amended claims satisfied the support and sufficiency requirements.

The majority also rejected the argument that Nalco should be denied the amendments because it had waited too long. Section 105(1A) permits an applicant to seek amendments during a Federal Court appeal to cure deficiencies identified through the opposition process, including deficiencies identified by the Court. Nalco had not engaged in relevant culpable delay, had provided sufficiently full disclosure of the amendment history, and the amendments removed the relevant grounds of objection.

The appeal concerning the proposed amendments was allowed. The Court ordered that the amendments be permitted and that the application proceed to grant in the amended form.

3.6 Estoppel

Orikan Group Pty Ltd v Vehicle Monitoring Systems Pty Ltd (No 2) [2026] FCA 407 concerned underground parking sensors and enforcement communications.

In relation to the issue of estoppel, O’Bryan J held that, following the Raising the Bar reforms, findings made in a pre-grant patent opposition can now create an issue estoppel in later infringement/revocation proceedings between the same parties or their privies.

(The former authority was Genetics Institute v Kirin-Amgen (1999) 92 FCR 106.

In that case, the Full Court held that a determination of a validity ground in a pre-grant opposition did not create an issue estoppel in a later post-grant revocation proceeding. The reason was that, under the law at that time, the two proceedings applied materially different standards. In the opposition, the question was whether it was “practically certain” that the patent, if granted, would be invalid. In a subsequent revocation proceeding, the Court instead had to determine whether the patent was invalid. They were therefore not the “same question” for issue-estoppel purposes.

The Raising the Bar Act changed this. Section 60(3A) now provides that an opposition is determined on the balance of probabilities. O'Bryan J therefore held in Orikan Group Pty Ltd v Vehicle Monitoring Systems Pty Limited (No 2) [2026] FCA 407 that the distinction underpinning Genetics Institute no longer exists. Consequently, a factual or legal issue necessarily determined in an opposition can now create an issue estoppel in subsequent revocation proceedings between the same parties or their privies.)

In this case, Orikan brought proceedings for infringement of its patent against Vehicle Monitoring Systems (VMS) and VMS cross claimed for invalidity relying upon the grounds of insufficiency and lack of best method. Some years earlier, VMS had opposed the grant of the corresponding accepted patent application. VMS lost that opposition and appealed the decision, with the appeal being heard by Justice Burley. Burley J handed down a judgement dismissing the appeal and rejecting the ground of insufficiency (amongst others).

Justice O'Bryan held that the judicial determination of an issue of fact or of law that is legally indispensable to the determination of a ground of invalidity in an opposition proceeding under section 60(4) of the Patents Act disposes of that issue once and for all. It cannot afterwards be raised between the same parties or their privies in a subsequent revocation counter claim to an infringement proceeding or a revocation proceeding.

The court also considered whether an Anshun estoppel arose in the revocation proceeding. Referring to a separate earlier decision on this point, Justice O'Bryan noted that the reason an Anshun estoppel did not arise was because of the fundamental difference in the nature and consequences of an opposition proceeding and a revocation action. In the opposition proceeding VMS chose to initiate the action and it was appropriate to run a confined action consistent with the nature of such a proceeding. Therefore VMS could not be criticised for not raising each and every possible claim or issue in the earlier opposition proceeding.

The decision highlights the importance of carefully considering the potential impact of positions taken in opposition proceedings on subsequent litigation and whether an opponent should appeal on opposition proceedings or choose instead to pursue a revocation action in court. A question that is still unanswered is whether a decision of a hearing officer in an opposition proceeding provides a basis for asserting that an issue estoppel arises in a subsequent revocation action. Perhaps it does not given that a Patent Office decision is administrative rather than judicial in nature.