

Export Market Development Grants

Expense category: IP Registration and related insurance

What does 'Intellectual Property' mean?

For this expense category, intellectual property covers, but is not limited to:

- patents
- designs
- trademarks *
- plant breeders' rights (PBRs)
- circuit layout rights
- confidentiality/trade secrets, or
- copyright.

The intellectual property must meet the requirements of section 26 of the EMDG Act. For rights relating to trade marks, the trade mark must have been first used in Australia, or increased in significance or value because of its use in Australia. For rights relating to any other thing, that thing must have resulted to a substantial extent from research or work done in Australia.

The intellectual property must be owned or held on exclusive assignment by the EMDG applicant or its related entity.

Applicants promoting eligible goods that embody eligible intellectual property are entitled to claim their expenses of IP registration.

* There is a difference between trademarks and business, company or domain names. Company and business names must be registered to comply with national, State and Territory legislation. Domain names can be registered as a trade mark if they meet the requirements of the *Trade Marks Act 1995*.

What can be claimed?

Under this category, you can claim payments made to third parties, e.g. patent and trade mark attorneys that are attributable to the grant, registration or extension of the term or period of the registration of the intellectual property for countries other than Australia, Democratic People's Republic of Korea (DPRK) (North Korea), Iran or New Zealand. Eligible expenses will be those that are caused by or due to the seeking of registration or the extension of the term of those rights under the law of a country other than Australia or New Zealand.

The grant, registration or extension is required to have been made for an approved promotional purpose under sections 37 and 38 of the EMDG Act, i.e. it must be for increasing export sales of your product.

You may also claim expenses by way of insurance premiums paid for protection against possible infringement, in countries outside Australia, of eligible intellectual property.

Premiums are eligible to the extent they relate to the protection of intellectual property obtained under the laws of overseas countries except Democratic People's Republic of Korea (DPRK) (North Korea), Iran and New Zealand.

The insurance costs must have been incurred for an approved promotional purpose under sections 37 and or 38 of the EMDG Act, i.e. the costs must be for increasing export sales of your product.

On expenses incurred, claims for intellectual property registration can be of up to \$50,000 per application.

What can't be claimed?

You cannot claim expenses of:

- registering IP rights in Australia, DPRK, (North Korea), Iran and New Zealand
- registering business, company or domain names (unless they meet the requirements of the *Trade Marks Act 1995*)
- in-house expenses e.g. salary of your employees and other expenses not directly related to IP registration
- registering IP rights where the IP is not eligible intellectual property under section 26 of the EMDG Act
- registering IP rights not owned or held on exclusive assignment by the applicant or it's related entity
- any portion of insurance premiums paid for protection under Australian law
- any portion of costs that are for other insurances e.g. product liability
- any costs associated with defending patent and other intellectual property infringement, including any preliminary litigation fees.

MORE INFORMATION

Call Austrade on **13 28 78** and ask for your local EMDG office.

Email us at **emdg.help@austrade.gov.au**

Attend an EMDG coaching session - visit **www.austrade.gov.au/exportgrants/coaching** to register.

Download the EMDG Act and other publications at **www.austrade.gov.au/exportgrants/publications**

Visit the IP Australia website at **www.ipaustralia.gov.au**