

Patents in Australia: Manner of Manufacture

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Every patent application filed in Australia must clear a deceptively simple hurdle: the invention must be a 'manner of manufacture' within the meaning of the Statute of Monopolies. [\[1\]](#)

The long-running litigation of *Aristocrat v Commissioner of Patents* [\[1\]](#) has thrown this basic concept back into the lights, given its impact on the patentability of computer-implemented inventions. But what is a 'manner of manufacture'?

This phrase remains the gatekeeping concept for what can and cannot be patented under Australian patent law. It sits alongside novelty [\[2\]](#) and inventive step [\[3\]](#) as one of the core requirements for a valid patent, but unlike those requirements, it asks a more fundamental question: Is this the *kind* of thing the patent system is meant to protect?

For businesses assessing freedom to operate, for researchers commercialising new technology, and for investors evaluating the strength of a target's IP portfolio, understanding this threshold is essential. A patent that fails on 'manner of manufacture' is invalid from the outset, regardless of how novel or commercially valuable the underlying technology might be thought to be.

General Law and the Importance of 'Manner of Manufacture'

The concept of 'manner of manufacture' in patent law has a long history. It originates in section 6 of the *Statute of Monopolies* 1623 (UK), an English law enacted to curb the Crown's practice of granting arbitrary monopolies while preserving a carve-out for genuine inventions described as "*any manner of new manufactures*". That phrase has survived into section 18(1)(a) of the *Patents Act* 1990 (Cth), which requires that an invention, so far as claimed, be "*a manner of manufacture within the meaning of section 6 of the Statute of Monopolies*". Given the ambiguity of this phrase, much of the substantive content of this element has been developed by the courts.

The leading authority is the High Court's decision in *National Research Development Corporation v Commissioner of Patents* [\[4\]](#) (NRDC). This decision concerned a method for eradicating weeds using a known chemical compound applied in a new way. The Commissioner had rejected the application on the basis that a method of using a known substance could not be a "*manufacture*" in the literal sense of producing a physical article. [\[5\]](#) The High Court rejected that narrow reading, holding instead that the test should focus on whether the invention produces an "*artificially created state of affairs*" that has economic utility. [\[6\]](#)

In other words, a 'manner of manufacture' assesses whether the contribution of the invention is directed to the type or nature of subject matter that should attract patent protection. This is different to 'novelty' and 'inventive step', which assess whether that contribution is significant enough or sufficiently advances the art when compared with prior art.

The reformulation in *NRDC* shifted the inquiry away from whether something physical was made, and towards whether the invention generates a useful, artificial effect. *NRDC* is significant because it established that a 'manner of manufacture' is a broad, flexible, and evolving concept, capable of adapting to new fields of technology as they emerge, rather than a fixed category.

Subsequent case law expanded on this foundation. In *Joos v Commissioner of Patents*,^[7] the High Court confirmed that methods of cosmetic treatment (strength and elasticity of hair and nails) could meet the manner of manufacture test,^[8] and in *Anaesthetic Supplies Pty Ltd v Rescare Ltd*^[9] and *Bristol-Myers Squibb Co v F H Faulding & Co Ltd*,^[10] the Full Federal Court confirmed that methods of medical treatment of humans are patentable subject matter in Australia. Further, in *Grant v Commissioner of Patents*,^[11] the Court considered a scheme for protecting assets from creditors and held that, to satisfy the test, an invention must involve a physical effect or transformation to be an artificially created state of affairs of economic utility; a pure abstract scheme, absent any physical consequence, would not suffice.^[12]

In *D'Arcy v Myriad Genetics Inc*,^[13] the High Court emphasised that the first step in the analysis of an invention is the characterisation of that invention. This is decided on the construction of the claim in light of the specification as a whole and common general knowledge, determined as a matter of substance, not merely the form of the claim.^[14]

Recent Developments

The most contested aspect recently has been computer-implemented inventions, including software and business methods. In *Research Affiliates LLC v Commissioner of Patents*^[15] and *Commissioner of Patents v RPL Central Pty Ltd*,^[16] the Full Federal Court held that merely implementing an abstract idea, scheme, or business method on a generic computer, without more, did not confer patentability. The courts drew a distinction between inventions where the computer is integral to the invention and produces a new and useful result, and those where the computer is simply a vehicle for carrying out an otherwise unpatentable scheme.

No decision looms larger over this area than *Aristocrat Technologies Australia Pty Ltd v Commissioner of Patents*,^[17] concerning electronic gaming machines, in which the High Court divided evenly, three judges to three, on whether a claim combining conventional hardware with novel gameplay software was a manner of manufacture. The split crystallised a substantive debate: whether a computer-implemented invention must show an advance in computing technology itself, as proposed in the Full Federal Court, or whether it suffices that the claimed hardware and software combination, considered as a whole, produces an artificially created state of affairs with a useful result, consistent with the flexible *NRDC* inquiry.

That debate was resolved in *Aristocrat's* favour by 2025, when the Full Federal Court in *Aristocrat Technologies Australia Pty Ltd v Commissioner of Patents*^[18] held that it is too rigid an approach to say that implementing an idea on a computer, using conventional and well-understood computing functions, can never be patentable, and found that an EGM incorporating interdependent physical and software components was properly characterised as a manner of manufacture. Following the High Court refusal of special leave to appeal in early 2026, the 2025 decision now stands as the leading Australian authority on computer-implemented inventions. The practical guidance for applicants is whether, properly characterised, the subject matter that is alleged to be patentable is an abstract idea which is manipulated on a computer or an abstract idea which is *implemented* on a computer to produce an *artificial state of affairs and a useful result*.^[19]

Other areas of relevance include genetic material, addressed by the High Court in the seminal case of *D'Arcy v Myriad Genetics Inc*, which held by majority that claims to an isolated nucleic acid coding for a mutated BRCA1 polypeptide were not a manner of manufacture. The plurality (French CJ, Kiefel, Bell and Keane JJ), accepted that isolation produces differences from nucleic acid as it existed in the

cell, but held that these differences played no part in the definition of the invention as claimed and were therefore immaterial to characterising the claims as a manner of manufacture.^[20]

This decision confirmed that merely isolating a product of nature, without more, will not satisfy the threshold, and it sits alongside the computer-implemented invention cases as evidence that the courts are prepared to scrutinise the true ‘substance’ of a claim rather than its form.

Excluded Subject Matter

Even where an invention clears the manner of manufacture threshold, the *Patents Act 1990* (Cth) carves out one absolute exclusion of particular relevance to life sciences and reproductive technology. Section 18(2) provides that human beings, and the biological processes for their generation, are not patentable inventions, and this exclusion applies regardless of whether the underlying invention would otherwise satisfy the *NRDC* test.

This provision was inserted into the Act following amendments driven by ethical concerns about cloning and human reproduction, and the Patent Office has since had to grapple with defining its boundaries in the absence of any statutory definition of a human being. In *Re Fertilitescentrum AB and Luminis Pty Ltd*,^[21] the Deputy Commissioner held that the exclusion covers any entity that might reasonably claim the status of a human being from fertilisation through to birth, together with the biological processes applied during that period, while in *Re Hwang*^[22] the exclusion was held to extend to a hybrid embryo containing human nuclear DNA.

In *International Stem Cell Corporation* [2016] APO 52, the Patent Office accepted that parthenogenetically activated blastocysts, lacking the capacity to develop to birth, fall outside the exclusion, illustrating that s 18(2) is assessed by reference to developmental potential rather than mere biological origin.^[23] The exclusion sits alongside, but is analytically distinct from, the High Court’s reasoning in *D’Arcy v Myriad Genetics Inc*, which turned on the general manner of manufacture inquiry under section 18(1)(a) rather than on section 18(2), confirming that isolated genetic material must still be assessed under the general manner of manufacture inquiry in section 18(1)(a), which turns on the substance of the claimed invention and whether it resides in genetic information rather than in any artificially created difference, quite apart from the separate question of human generation under section 18(2).

For general counsel and investors in fertility and regenerative medicine, this means claims must be must first clear the section 18(2) exclusion by not constituting, or resulting from a biological process for generating, a human being (per *Fertilitescentrum*, *Hwang*, and *International Stem Cell Corporation*), and must separately satisfy the manner of manufacture inquiry under section 18(1)(a) by residing in something more than naturally occurring information (as held in *D’Arcy*).

Takeaways

The practical lesson is that ‘manner of manufacture’ cannot be treated as a formality. It is a substantive inquiry into whether an invention produces a genuinely artificial, useful effect, and Australian courts have shown a consistent willingness to look past clever claim drafting to the true character of what is claimed.

Software, business methods, and biotechnology inventions face high scrutiny, and while the decade-long uncertainty surrounding computer-implemented inventions has been clarified, applicants should still draft patent claims carefully to demonstrate a genuine, substantive combination of physical and software elements producing a useful result, rather than dressing up an abstract scheme or business method in computer language.

Given that failure on this ground renders a patent invalid outright, due diligence on any Australian patent portfolio, whether for licensing, litigation, or investment purposes, should always include a considered assessment of whether the claimed subject matter would survive a manner of manufacture challenge.

Piper Alderman has a nationally recognised intellectual property & technology practice, with experience in patent litigation. Please contact us if you require advice.

[1] (2025) 311 FCR 493; *Commissioner of Patents v Aristocrat Technologies Australia Pty Ltd* [2026] HCADisp 15.

[2] *Patents Act 1990* (Cth) s 18(1)(b)(i).

[3] *Ibid* s 18(1)(b)(ii).

[4] (1959) 102 CLR 252 (Dixon CJ, Kitto and Windeyer JJ).

[5] *Ibid* [4].

[6] *Ibid* [25] – [28].

[7] (1972) 126 CLR 611.

[8] *Ibid* [26] – [27] (Barwick CJ).

[9] (1994) 50 FCR 1.

[10] (2000) 97 FCR 524.

[11] (2006) 154 FCR 62.

[12] *Ibid*.

[13] (2015) 258 CLR 334.

[14] *Ibid* [11], [87] – [88] (French CJ, Kiefel, Bell and Keane JJ), [144] – [145] (Gageler and Nettle JJ).

[15] (2014) 227 FCR 378.

[16] (2015) 238 FCR 27.

[17] (2022) 274 CLR 115.

[18] [2025] FCAFC 131.

[19] *Ibid* [131].

[20] *D’Arcy v Myriad Genetics Inc* (2015) 258 CLR 334

[21] [2004] APO 19.

[22] [2004] APO 24.

[\[23\]](#) *International Stem Cell Corporation* [2016] APO 52, [23] – [32] (Delegate S Calanni).