Trade mark classification guidance:
Virtual goods, metaverse, NFTs, and blockchain

Like many global IP Offices, IP Australia has observed a surge in trade mark applications relating to virtual goods, metaverse, NFTs, and blockchain. This guidance aims to clarify IP Australia's practice relating to the classification of these emerging technologies in trade mark applications.

Our classification practices will continue to evolve to meet the needs of customers in this fast-moving field. We are closely considering emerging global trends and will continue to engage with IP Offices for international consistency.

The 2023 Nice Union Committee of Experts adopted a number of useful additions to the Nice Classification which will come into force in the 12th Edition (2024 version) on January 1, 2024. IP Australia's guidance is in line with the upcoming additions and applies immediately.

Virtual goods

Virtual goods are digital objects used in online virtual environments. Virtual goods are correctly classified in Class 9 because the goods to which they relate consist essentially of data. However, terms such as "virtual goods" or "downloadable goods" alone lack specificity and are not acceptable. Applications must specify the exact nature of the virtual goods (such as software, image files, music, or clothing).

For example:
Class 9: *downloadable virtual clothing*

Services relating to virtual goods will fall into other classes depending on the nature of the service.

For example:
Class 35: *online retail services for downloadable virtual clothing*

Metaverse and virtual environments

As the marketplace evolves, services are increasingly being offered virtually. Applicants use various wording to describe online virtual environments where users interact such as "metaverse," "virtual environments," and "web3". While we will accept the terms "metaverse" and "web3" in specifications, the term "virtual environments" is preferred for its broad application to many contexts.

For example:
Class 41: *entertainment services provided in virtual environments*

Class 42: *hosting virtual environments*

Classification of services in a virtual environment must be carefully considered. IP Australia is taking an approach which considers the impact of the service in the real world.

In many cases, the purpose of the service and the real-world impact is the same whether provided virtually or in person. In these cases, the virtual service will be classified in the same way as its real-world counterpart. For example, education services are classified in Class 41 whether provided virtually or in person because the real-world impact is the same. Banking services, where real funds are sent and received, are classified in Class 36 because the real-world impact is the same. The manner in which the service is provided does not change the benefit received.

However, there are some situations where the impact in a virtual environment is different to the real world. For example, a virtual restaurant appearing in an online environment does not involve physical food because the avatar is consuming virtual food. Restaurant services provided in an online environment would be considered a Class 41 entertainment service, not a Class 43 restaurant service. Similarly, travel simulations in a virtual environment do not involve physical transportation and would be considered a Class 41 entertainment service, not a Class 39 transportation service.

NFTs

An NFT (non-fungible token) is a unique token that exists on a blockchain. It acts as a digital certificate used to record ownership of an item such as a digital artwork or collectible. An NFT is not considered a good or service but a means of certification.

A claim for "NFT" or "non-fungible token" on its own lacks specificity and is not acceptable. Applications must specify the exact nature of the goods being authenticated.

For example:
Class 9: *downloadable digital image files authenticated by non-fungible tokens [NFTs]*

Class 9: *downloadable digital music files authenticated by non-fungible tokens [NFTs]*

Services relating to NFTs must also be adequately specified.

For example:
Class 35: *retail services relating to downloadable digital image files authenticated by non-fungible tokens [NFTs]*

Class 42: *providing online non-downloadable computer software for minting non-fungible tokens [NFTs]*

Physical items can also be authenticated by NFTs where digital tokens are linked to physical assets and are used to demonstrate ownership of real-world goods such as art or fashion. Where an NFT authenticates physical goods, it will be classified in the appropriate goods class.

For example:
Class 25: *clothing authenticated by non-fungible tokens [NFTs]*

Blockchain

A blockchain is a ledger or distributed database that records encrypted blocks of data. Blockchain technology has a wide variety of applications and is commonly used in the fields of cryptocurrency, finance, gaming, and digital authentication.

A claim for "blockchain" on its own lacks specificity and is not acceptable. For classification purposes, blockchain technology is a feature of goods or the means through which services are provided.

For example:
Class 9: *downloadable computer software for blockchain technology*

Class 36: *electronic funds transfer provided via blockchain technology*

Class 42: *computer programming of smart contracts on a blockchain*

This guidance will be available in the IP Australia Trade Marks Office Manual of Practice and Procedure.