

CHAPTER 342.

PATENTS AND DESIGNS.

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CHAPTER 342.**PATENTS AND DESIGNS.****An Ordinance to amend and consolidate the law as to the registration of Patents and Designs.**

[1ST JANUARY, 1938.]

9 of 1937.
10 of 1938.
30 of 1949.

Short title.

1. This Ordinance may be cited as the Patents and Designs Ordinance.

Interpretation.

2. In this Ordinance unless the context otherwise requires the following words and expressions shall have the meanings hereby assigned to them—

“Appeal Tribunal” means a tribunal constituted in accordance with the provisions of section 109 of this Ordinance.

“article” means (as respects designs) any article of manufacture and any substance artificial or natural, or partly artificial and partly natural;

“Court” means the Supreme Court of British Guiana;

“Court of Appeal” means the West Indian Court of Appeal;

“copyright” means the exclusive right to apply a design to any article in any class in which the design is registered;

“date of application” has the meaning assigned to it in section 6 of this Ordinance;

“design” means only the features of shape, configuration, pattern, or ornament applied to any article by any industrial process or means, whether manual, mechanical, or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction, or anything which is in substance a mere mechanical device;

“examiner” means any skilled person appointed by the Governor for the purposes of this Ordinance to whom the Registrar refers questions concerning patents;

“Her Majesty’s dominions outside the United Kingdom” includes the British protectorates and protected states and any territory in respect of which a mandate on behalf of the League of Nations has been accepted by Her Majesty;

10 of 1938,
s. 2.

“invention” means any manner of new manufacture the subject of letters patent and grant of privilege within section 6 of the Statute of Monopolies and includes an alleged invention;

“inventor” and “applicant” shall, subject to the provisions of this Ordinance, include the legal representative of a deceased inventor or applicant;

“patent” means letters patent for an invention;

“patentee” means the person for the time being entered on the register as the grantee or proprietor of the patent;

“patent of addition” means a patent granted under the provisions of section 23 of this Ordinance;

“prescribed” means prescribed by regulations under this Ordinance;

“ proprietor of a new or original design ”—

(a) where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed; and

(b) where any person acquires the design, or the right to apply the design to any article either exclusively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired; and

(c) in any other case, means the author of the design; and where the property in, or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person;

“ the Registrar ” means the Registrar of Patents, Designs and Trade Marks;

“ the Registrar of Patents, Designs and Trade Marks ” means the Registrar of Deeds;

“ the Statute of Monopolies ” means the Act of the twenty-first year of the reign of King James the First, Chapter three, intituled “ An Act concerning monopolies and dispensations with penal laws and the forfeiture thereof ”;

“ United Kingdom ” means the United Kingdom of Great Britain and Northern Ireland;

“ working on a commercial scale ” means the manufacture of the article or the carrying on of the process described and claimed in a specification for a patent in or by means of a definite and substantial establishment or organisation, and on a scale which is adequate and reasonable under all the circumstances.

PART I.—PATENTS.

TITLE I.

Application for and Grant of Patent.

Application.

3. (1) An application for a patent may be made by any person who claims to be the true and first inventor of an invention; whether he is a British subject or not, and whether alone or jointly with any other person.

(2) The application must be made in the prescribed form, and must be left at, or sent by post to, the Registrar in the prescribed manner.

(3) The application must contain a declaration to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application one at least of the applicants, claims to be the true and first inventor, and for which he desires to obtain a patent, and must be accompanied by either a provisional or complete specification.

(4) The declaration required by this section may be either a statutory declaration or not, as may be prescribed.

4. (1) A provisional specification must describe the nature of the invention. Specifica-
tions.

(2) A complete specification must particularly describe and ascertain the nature of the invention and the manner in which the same is to be performed.

(3) In the case of any provisional or complete specification where the Registrar deems it desirable he may require that suitable drawings shall be supplied with the specification, or at any time before the acceptance of the same, and such drawings shall be deemed to form part of the said specification.

(4) A specification, whether provisional or complete, must commence with the title, and in the case of a complete specification must end with a distinct statement of the invention claimed.

(5) Where the invention in respect of which an application is made is a chemical invention, then, subject to the prescribed rules, typical samples and specimens shall, if in any particular case the Registrar considers it desirable so to require, be furnished before the acceptance of the complete specification, and the applicant shall be at liberty, where he so desires, and subject to the prescribed rules, so to furnish any typical samples and specimens, unless the Registrar in any particular case considers that it is undesirable that any should be received.

5. (1) The Registrar shall refer, if he thinks fit, any application to an examiner. Proceedings
upon
application.

(2) If the Registrar is of opinion, or if, after reference to an examiner, the examiner reports that the nature of the invention is not fairly described, or as respects a complete specification that the nature of the invention or the manner in which it is to be performed is not therein particularly described and ascertained, or that the application, specification, or drawings have not been prepared in the prescribed manner, or that the title does not sufficiently indicate the subject-matter of the invention, 30 of 1949,
s. 2.

the Registrar may refuse to accept the specification or require that the application, specification, or drawings be amended before he proceeds with the application; and in the latter case the application shall, if the Registrar so directs, be deemed to have been made on the date on which the requirement is complied with.

(3) The Registrar may, where the application was accompanied by a specification purporting to be a complete specification, if the applicant so requests, treat the specification as a provisional specification and proceed with the application accordingly.

(4) The Registrar may, where the applicant before acceptance of the complete specification so requests and upon payment by the applicant of the prescribed fee, direct that the application shall be deemed to have been made on such date within a period of six months running from the date when the application was actually made, as the applicant may request.

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s. 2.

(5) The applicant may appeal from any decision of the Registrar under this section to the Appeal Tribunal who shall, if required, hear the applicant and the Registrar, and may make an order determining whether and subject to what conditions (if any) the specification shall be accepted.

30 of 1949,
s. 2.

(6) The Registrar shall, when a specification has been accepted, give notice thereof to the applicant.

Provisional
protection.

6. An invention may, during the period between the date of an application for a patent therefor and the date of sealing a patent on that application, be used and published without prejudice to that patent, and such protection from the consequences of use and publication is in this Ordinance referred to as provisional protection.

In this section the expression "date of an application for a patent" means, as respects an application which is post-dated or ante-dated under this Ordinance, the date to which the application is so post-dated or ante-dated, and means, as respects any other application, the date on which it is actually made.

Time for leaving complete
specification.
30 of 1949,
s. 3.

7. (1) If the applicant does not leave a complete specification with his application, he may leave it at any subsequent time within the period allowable under subsection (2) of this section.

30 of 1949,
s. 3.

(2) The period allowable for leaving a complete specification shall be a period of twelve months from the date of the application:

Provided that the said twelve months shall be extended to such period, not exceeding thirteen months from the date of the application, as may be specified in a request made by the applicant to the Registrar if the request is made and the prescribed fee is paid within the period specified.

(3) If the complete specification is not left within the period allowable under subsection (2) of this section, the application shall be deemed to be abandoned at the expiration of thirteen months from the date thereof.

30 of 1949,
s. 3.

8. (1) Where a complete specification is left after a provisional specification, the Registrar may, if he thinks fit, refer both specifications to an examiner.

Comparison
of provisional
and complete
specification.

(2) If the Registrar is of opinion, or if, after reference to an examiner, the examiner reports that the nature of the invention or the manner in which it is to be performed is not particularly described and ascertained in the complete specification or that the complete specification or drawings have not been prepared in the prescribed manner, the Registrar may refuse to accept the complete specification until it has been amended to his satisfaction.

(3) If the Registrar is of opinion, or if, after reference to an examiner, the examiner reports that the invention particularly described in the complete specification is not substantially the same as that which is described in the provisional specification the Registrar may—

(a) refuse to accept the complete specification until it has been amended to his satisfaction; or

(b) (with the consent of the applicant) cancel the provisional specification and direct that the application shall be deemed to have been made on the date at which the complete specification was left, and proceed with the application accordingly:

Provided that where the complete specification includes an invention not included in the provisional specification the Registrar may allow the original application to proceed so far as the invention included both in the provisional and in the complete specification is concerned, and allow an application for the additional invention included in the complete specification to be made and direct that that application shall be deemed to have been made on the date at which the complete specification was left.

(4) An appeal shall lie from the decision of the Registrar under this section to the Appeal Tribunal, who shall, if required, hear the applicant and the Registrar and may make an order determining whether and subject to what conditions (if any) the complete specification shall be accepted.

Investigation
of previous
specifications
in British
Guiana on
applications
for patents.

9. (1) Where an application for a patent has been made and a complete specification has been left, the Registrar, or if, the application has been referred to an examiner, the examiner shall, in addition to the other inquiries which he is directed to make by this Ordinance, make a further investigation for the purpose of ascertaining whether the invention claimed has been wholly or in part claimed or described in any specification (other than a provisional specification not followed by a complete specification) published before the date which the patent applied for would bear if granted and left pursuant to any application for a patent made in the Colony and dated within fifty years next before such date.

(2) If on investigation it appears that the invention claimed has been wholly or in part claimed or described in any such specification, the applicant shall be informed thereof, and the applicant may, within such time as may be prescribed, amend his specification, and the amended specification shall be investigated in like manner as the original specification.

(3) If the Registrar is satisfied that no objection exists to the specification on the ground that the invention claimed thereby has been wholly or in part claimed or described in a previous specification as before mentioned, he shall, in the absence of any other lawful ground of objection, accept the specification.

(4) If the Registrar is not so satisfied, he shall, unless the objection is removed by amending the specification to the satisfaction of the Registrar, determine whether a reference to any, and, if so, what prior specifications ought to be made in the specification by way of notice to the public:

Provided that the Registrar, if satisfied that the invention claimed has been wholly and specifically claimed or wholly and specifically described in any specification to which the investigation has extended, may in lieu of requiring references to be made in the applicant's specification as aforesaid, refuse to grant the application for a patent.

(5) If it is within the knowledge of the Registrar that the invention claimed has been made available to the public by publication in the Colony, before the date which the patent

applied for would bear if granted, in any document (other than a British Guiana specification or a specification describing the invention for the purposes of an application for protection made in any country outside British Guiana more than fifty years next before that date, or any abridgment of, or extract from, any such specification published under the authority of the Registrar or of the Government of any country outside British Guiana), the provisions of subsections (2), (3) and (4) of this section shall apply in relation to a claim or description of the invention in that document in like manner as those provisions apply in relation to a description thereof in a prior specification to which the investigation has extended.

(6) An appeal shall lie from the decision of the Registrar under this section to the Appeal Tribunal.

10. (1) In addition to the investigation under the last preceding section, the Registrar, or, if the application has been referred to an examiner, the examiner shall make an investigation for the purpose of ascertaining whether the invention claimed has been wholly or in part claimed in any specification published on or after the date which the patent applied for would bear if granted and deposited pursuant to an application made in the Colony for a patent which if granted would bear prior date to the date which the patent applied for would bear if granted.

Investigation
of specifica-
tions
published
subsequently
to
application.

(2) Where on such further investigation it appears that the invention claimed has been wholly or in part claimed in any such specification, the applicant shall, whether or not his specification has been accepted or a patent granted to him, be afforded such facilities as may be prescribed for amending his specification, and in the event of his failing to do so the Registrar shall, in accordance with such procedure as may be prescribed, determine what reference, if any, to other specifications ought to be made in his specification by way of notice to the public.

(3) An appeal shall lie from the decision of the Registrar under this section to the Appeal Tribunal.

(4) The investigations and reports required by this and the last preceding section shall not be held in any way to guarantee the validity of any patent and no liability shall be incurred by the Government or any officer thereof by reason of or in connection with any such investigation or report or any proceedings consequent thereon.

Time within which application must be in order and for acceptance of complete specification.
30 of 1949, s. 4.

11. (1) The application must be in order within the period allowable under subsection (5) of this section.

An application shall be deemed to be in order when the complete specification has been left, or, where it has been returned to the applicant after it has been first left, has been finally left, and the applicant has satisfied all requirements to be satisfied by him by virtue of this Ordinance, or of regulations made thereunder, whether in connection with the complete specification or otherwise in relation to the application, and not before.

30 of 1949, s. 4.

(2) If the application is not in order within that period, it shall become void at the expiration of twenty-one months from the date thereof or at the expiration of that period, whichever is the later.

30 of 1949, s. 4.

(3) Subject to the provisions of subsection (4) of this section, if the application is in order within that period, the complete specification may be accepted at any time after the application is in order, and, if not accepted before the expiration of that period, shall be accepted as soon as may be thereafter.

30 of 1949, s. 4.

(4) If the application is in order before the expiration of twenty-one months from the date thereof and within the said period, upon a request for postponement being made by the applicant before the complete specification has been accepted, and, in the case of a request for postponement to a date later than eighteen months from the date of the application, upon payment of the prescribed fee, the Registrar may postpone acceptance of the specification to such date, not being later than the expiration of twenty-one months from the date of the application, as may be specified in the request, or, where more than one such request has been made, as may be specified in the last request.

30 of 1949, s. 4.

(5) The period allowable for the purposes of this section shall be a period of eighteen months from the date of the application:

Provided that—

(a) the applicant may give notice to the Registrar that he desires the said period to be extended to nineteen, to twenty or to twenty-one months from the date of the application, and if he gives such a notice and pays the prescribed fee within the period specified in the notice, that period (or where more than one such notice has been given, the period specified in the last notice) shall be the period allowable;

(b) if at the expiration of the period which would otherwise be the period allowable by virtue of the foregoing provisions

of this subsection the last day has not passed on which an appeal under any of the provisions of this Ordinance, either in respect of the application, or, in the case of an application for a patent of addition, in respect of the application for the original patent, could be made in accordance with the rules of the Appeal Tribunal apart from any future extension of time thereunder, or if such an appeal is then pending, then—

(i) where no appeal is made before or on the said last day or before the expiration of any extension or extensions of time for appealing beyond that day granted in the case of a first extension on an application made before or on that day and in the case of a subsequent extension on an application made before the expiration of the last previous extension, the period allowable shall be the period beginning on the date of the application and ending on that day, or, where the time for appealing has been so extended, on the expiration of the last extension so granted;

(ii) in any other case, the period allowable shall be such period as the Tribunal may determine.

12. On the acceptance of the complete specification the Registrar shall advertise the acceptance in the Gazette and the application and specifications, with the drawings, samples and specimens (if any), shall be open to public inspection.

Advertisement on acceptance of complete specification.

13. After the acceptance of a complete specification and until the date of sealing a patent in respect thereof, or the expiration of the time for sealing, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the acceptance of the complete specification:

Effect of acceptance of complete specification.

Provided that an applicant shall not be entitled to institute any proceeding for infringement until the patent has been sealed.

14. (1) Any person may at any time within two months from the date of the advertisement of the acceptance of a complete specification or within such further period, not exceeding one month, as the Registrar may on an application made to him within the said period of two months and subject to the payment of the prescribed fee, allow, give notice to the Registrar of opposition to the grant of the patent on any of the following grounds—

Opposition to grant of patent.
10 of 1938,
s. 3.

(a) that the applicant obtained the invention or any part thereof from him, or from a person of whom he is the legal representative; or

(b) that the invention has prior to the date which the patent applied for would bear if granted been published in any complete specification, or in any provisional specification followed by a complete specification, deposited pursuant to any application made in the Colony and dated within fifty years next before such date, or has been made available to the public by publication in any document (other than a British Guiana specification or a specification describing the invention for the purpose of an application for protection made in any country outside British Guiana more than fifty years next before such date, or any abridgment of, or extract from, any such specification published under the authority of the Registrar or of the Government of any country outside British Guiana) published in the Colony before such date; or

(c) that the invention has been claimed in any complete specification for a British Guiana patent which though not published at the date which the patent applied for would bear if granted was deposited pursuant to an application for a patent which is or will be of prior date to such patent; or

(d) that the nature of the invention or the manner in which it is to be performed is not sufficiently and fairly described and ascertained in the complete specification; or

(e) that the complete specification describes or claims an invention other than that described in the provisional specification, and that such other invention either forms the subject of an application made by the opponent for a patent which if granted would bear a date in the interval between the date of the application and the leaving of the complete specification or has been made available to the public by publication in any document published in British Guiana in that interval;

but on no other ground.

(2) Where such notice is given the Registrar shall give notice of the opposition to the applicant, and shall, after hearing the applicant and the opponent, if desirous of being heard, decide on the case.

(3) The decision of the Registrar shall be subject to appeal to the Appeal Tribunal, who shall, if required, hear the applicant and the opponent, if the opponent is, in the opinion of the Tribunal, a person entitled to be heard in opposition to the grant of the patent, and shall decide the case.

15. (1) The inventor of the whole of an invention or of a substantial part thereof shall, in accordance with and subject to the provisions of this section, be entitled to be mentioned as such inventor as provided by subsection (8) of this section, and for the purposes of this section—

Mention
of inventor
as such in
patent.
30 of 1949,
s. 5.

(a) the actual deviser of an invention or a part of an invention shall be deemed to be the inventor thereof, notwithstanding that any other person is for any of the other purposes of this Ordinance treated as the true and first inventor thereof;

(b) no person shall be deemed to be the inventor of an invention or a part of an invention by reason only of the importation thereof by him.

(2) If it is desired by the sole applicant for a patent, or by all the applicants, that any person shall be mentioned as aforesaid, a request in that behalf may be made in the prescribed manner by all the persons concerned (including the person alleged to be the inventor).

30 of 1949,
s. 5.

(3) If any person (other than a person in respect of whom a request in relation to the application in question has been made under subsection (2) of this section) desires to be mentioned as aforesaid he may make a claim in the prescribed manner in that behalf.

30 of 1949,
s. 5.

(4) No request or claim under the foregoing provisions of this section shall be entertained if it appears to the Registrar that the request or claim is based upon facts which, if proved in the case of an opposition under the provisions of paragraph (a) of subsection (1) of section 14 of this Ordinance by the person in respect of or by whom the request or claim is made (in this section referred to as "the claimant"), would have entitled him to relief under that section.

30 of 1949,
s. 5.

(5) A request or claim under the foregoing provisions of this section must be made not later than two months after the date of the advertisement of the acceptance of the complete specification, or within such further period (not exceeding one month) as the Registrar may, on an application made to him in that behalf before the expiration of the said period of two months and subject to payment of the prescribed fee, allow.

30 of 1949,
s. 5.

(6) Where a claim is made under subsection (3) of this section, the Registrar shall give notice of the claim to every applicant for the patent (not being the claimant) and to any other person whom the Registrar may consider to be interested.

30 of 1949,
s. 5.

30 of 1949,
s. 5.

(7) The Registrar shall, if required, hear a claimant and any person to whom notice of the claim has been given as aforesaid.

30 of 1949,
s. 5.

(8) If the Registrar is satisfied that a claimant is the inventor of the whole invention or a substantial part thereof, and that the application for the patent is a direct consequence of his being such inventor, the Registrar shall cause the claimant to be mentioned as such inventor in any patent granted in pursuance of the application, on the complete specification and in the register of patents.

30 of 1949,
s. 5.

(9) Any person who alleges that a claimant, mentioned as aforesaid, ought not to have been so mentioned may at any time apply to the Registrar in the prescribed manner for a certificate that the claimant ought not to have been so mentioned and the Registrar may, after hearing, if required, any person whom he may consider to be interested, issue a certificate to that effect, and if he does so, he shall rectify the specification and the register accordingly.

30 of 1949,
s. 5.

(10) Any decision of the Registrar under this section shall be subject to appeal to the Appeal Tribunal who shall, if required, hear any person who was entitled to be heard before the Registrar.

30 of 1949,
s. 5.

(11) The mention of a claimant as aforesaid shall not confer, or derogate from, any rights under the patent.

30 of 1949,
s. 11.

(12) The provisions of this section shall apply to—

(a) patents in force at, as well as to patents granted on or after, the 31st December, 1949;

(b) applications for patents made before, as well as to applications made on or after, the 31st December, 1949.

Grant and
sealing of
patent.

16. (1) If there is no opposition, or, in case of opposition, if the determination is in favour of the grant of a patent, a patent shall, on payment of the prescribed fee, be granted to the applicant, or in the case of a joint application to the applicants jointly, and the Registrar shall cause the patent to be sealed in duplicate with the seal of the Patent Office and one duplicate shall be retained and filed in the Patent Office:

Provided that—

(a) where an applicant under a joint application has died, the patent may, with the consent of his personal representative, be granted to the survivors or survivor of the joint applicants;

(b) where an applicant has agreed in writing to assign the patent when granted or, in the case of a joint application, his interest in the patent when granted, the patent may, upon proof of the agreement to the satisfaction of the Registrar, be granted to the assignee or, in the case of an assignment by a joint applicant of his interest to an assignee not being the other joint applicant, to the assignee jointly with the other applicant or his assignee.

(2) Where disputes arise between joint applicants or their assigns as to proceeding with an application, the Registrar, if satisfied that one or more of such persons ought to be allowed to proceed alone, may allow him or them to proceed with the application and may grant a patent to him or them, so, however, that all parties interested shall be entitled to be heard before the Registrar.

(3) An appeal shall lie from the decision of the Registrar under this section to the Appeal Tribunal.

(4) A patent shall be sealed not later than the expiration of twenty-one months from the date of application: 30 of 1949,
s. 6.

Provided that—

(a) where the period for the leaving of the complete specification has been extended beyond twelve months from the date of the application, or the period within which the application must be in order is longer than eighteen months from that date, or the acceptance of the complete specification has been postponed under the provisions of subsection (4) of section 11 of this Ordinance to a date later than the expiration of eighteen months from that date, the patent may be sealed within twenty-five months from that date;

(b) where the sealing of a patent is delayed by an appeal to the Appeal Tribunal or by any proceedings taken for obtaining the decision of the Registrar under the provisions of subsection (2) of this section, or by opposition to the grant of the patent, or by a request or claim under section 15 of this Ordinance, that patent and any patent of addition the sealing whereof is delayed in consequence of the delay in the sealing of that patent may be sealed at such time as in the first-mentioned case the Tribunal, or in any other such case as aforesaid the Registrar, may direct;

(c) where the patent is granted to the legal representative of an applicant who has died before the expiration of the time which would otherwise be allowed for sealing the patent,

the patent may be sealed at any time within twelve months after the date of his death or at such later time as the Registrar may think fit;

30 of 1949,
s. 6.

(5) The period allowed by or under the provisions of subsection (4) of this section for the sealing of a patent may from time to time be extended by the Registrar to such longer period as may be specified in an application made to him in that behalf, if the application is made and the prescribed fee is paid within that longer period:

Provided that the period so allowed as aforesaid for the sealing of a patent shall not be extended under this subsection by more than such amount (not being more than six months) as may be prescribed.

30 of 1949,
s. 6.

(6) Where in any case the longest period for sealing the patent allowable in that case by or under the provisions of subsections (4) and (5) of this section has been allowed, and it is proved to the satisfaction of the Registrar that hardship would arise in connection with the prosecution by an applicant of an application for a patent in any country outside the Colony unless that period is extended, that period may be extended from time to time to such longer period as appears to the Registrar to be necessary in order to prevent that hardship arising if an application in that behalf is made to him, and the prescribed fee is paid, within the first mentioned period, or in the case of a second or subsequent application under this subsection within the period to which that period was extended on the last preceding application thereunder.

30 of 1949,
s. 11.

(7) The provisions of paragraph (b) of the proviso to subsection (4) of this section shall apply to—

(a) patents in force at, as well as to patents granted on or after, the 31st December, 1949;

(b) applications for patents made before, as well as to applications made on or after, the 31st December, 1949.

Date of
patent.

17. Except as otherwise expressly provided by this Ordinance, a patent shall be dated as of the date of the application:

Provided that no proceedings shall be taken in respect of an infringement committed before the acceptance of the complete specification.

Effect,
extent and
form of
patent.

18. (1) A patent sealed with the seal of the Patent Office shall have the same effect as if it were sealed with the public seal of the Colony, and shall have effect throughout the Colony:

Provided that a patentee may assign his patent for any place in or part of the Colony, as effectually as if the patent were originally granted to extend to that place or part only.

(2) Every patent may be in the prescribed form and shall be granted for one invention only, but the specification may contain more than one claim; and it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention.

19. (1) A patent granted on the application of the true and first inventor shall not be invalidated by an application in fraud of him, or by provisional protection obtained thereon, or by any use or publication of the invention subsequent to that fraudulent application during the period of provisional protection.

Fraudulent
applications
for patents.

(2) Where a patent has been revoked by the Court on the ground that it has been obtained in fraud of the true and first inventor, or where the grant has been refused by the Registrar under the provisions of paragraph (a) of subsection (1) of section 14 of this Ordinance, or revoked on the same ground under the provisions of section 30 of this Ordinance, the Registrar may, on the application of the true inventor made in accordance with the provisions of this Ordinance, grant to him a patent for the whole or any part of the invention in lieu of and bearing the same date as the patent so revoked, or as would have been borne by the patent if the grant thereof had not been refused.

(3) Where in proceedings before the Registrar under this Ordinance for opposition to the grant of a patent or for revocation of a patent, the Registrar has found that an invention was in part obtained from the opponent or the applicant for revocation and has required that the specification be amended by exclusion of that part of the invention, he may, on the application of the true inventor made in accordance with the provisions of this Ordinance, grant to him a patent for that excluded part of the invention bearing the date of the opposed application or the date of the patent sought to be revoked as the case may be.

(4) No action shall be brought for any infringement of a patent granted under the provisions of either of the last two foregoing subsections committed before the date of sealing the patent.

Single patent
for cognate
inventions.

20. (1) Where the same applicant has put in two or more provisional specifications for inventions which are cognate or modifications one of the other, and has obtained thereby concurrent provisional protection for the same, and the Registrar is of opinion that the whole of such inventions are such as to constitute a single invention and may properly be included in one patent, he may accept one complete specification in respect of the whole of such applications and grant a single patent thereon.

(2) Such patent shall bear the date of the earliest of such applications, but in considering the validity of the same, and in determining other questions under this Ordinance, the Court or the Registrar, as the case may be, shall have regard to the respective dates of the provisional specifications relating to the several matters claimed in the complete specification.

TERM OF PATENT.

Term of
patent.
30 of 1949,
s. 7.

21. (1) *The term limited in every patent for the duration thereof shall, save as otherwise expressly provided by this Ordinance, be a term beginning on the date of the patent and ending at the expiration of sixteen years from the date (to be entered in the register of patents) on which the specification accepted as a complete specification is treated by the Registrar as having been first left.

(2) Any patent the original term of which had not expired at the date of the commencement of this Ordinance shall have effect as if the term mentioned therein was sixteen years instead of fourteen years, subject to the following conditions—

(a) any licence existing at that date which has been granted for the term of the patent shall be treated as having been granted for the term as so extended if the licensee so desires;

(b) if the patent would, apart from this section, have expired on or before the commencement of this Ordinance, the patent shall, during the period of extension, be subject to all the provisions of section 28 of this Ordinance (except subsection (5) thereof) as if the patent had been endorsed “licences of right.”

(3) Where any party to a contract with the patentee or any other person, entered into before the commencement of this

*The subsection as here printed applies in the case of patents granted on or after the 31st December, 1949; in the case of patents granted before that date the wording of the subsection is—

“(1) The term limited in every patent for the duration thereof shall, save as otherwise expressly provided by this Ordinance, be sixteen years from its date.”

Ordinance, is subjected to loss or liability by reason of the extension of the term of any patent under the provisions of this section, the Court shall have power to determine in what manner and by which parties such loss or liability shall be borne.

(4) A patent shall, notwithstanding anything therein or in this Ordinance, cease at the expiration of the period prescribed for the payment of any prescribed renewal fee, unless the patentee pays the fee within that period or within that period as extended under this subsection. 30 of 1949,
s. 7.

The period prescribed for the payment of any such fee shall from time to time be extended to such period (not exceeding a period three months longer than the prescribed period) as may be specified in a request in that behalf made by the patentee to the Registrar, if the request is made, and the fee and the prescribed additional fee (which shall not exceed forty-eight dollars) are paid, within the period so specified.

(5) If any proceeding is taken in respect of an infringement of the patent committed after a failure to pay any renewal fee within the prescribed period, and before any extension thereof, the Court before which the proceeding is proposed to be taken may, if it thinks fit, refuse to award any damages in respect of such infringement. 30 of 1949,
s. 7.

22. (1) A patentee may, after advertising in manner provided by rules of the Supreme Court his intention to do so, present a petition to the Court praying that his patent may be extended for a further term, but such petition must be presented at least six months before the time limited for the expiration of the patent: Extension
of term of
patent.

Provided that the Court may allow such a petition to be presented at such time, not being later than the time limited for the expiration of the patent, as the Court may in its discretion think fit.

(2) Any person may give notice to the Court of objection to the extension.

(3) On the hearing of any petition under this section the patentee and any person who has given such notice of objection shall be made parties to the proceeding, and the Registrar shall be entitled to appear and be heard, and shall appear if so directed by the Court.

(4) The Court, in considering its decision, shall have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case.

(5) If it appears to the Court that the patentee has been inadequately remunerated by his patent, the Court may by order extend the term of the patent for a further term not exceeding five years, or in exceptional cases, ten years, or may order the grant of a new patent for such term as may be specified in the order and containing any restrictions, conditions, and provisions the Court may think fit.

(6) Where, by reason of hostilities between Her Majesty and any foreign state, the patentee as such has suffered loss or damage (including loss of opportunity of dealing in or developing his invention owing to his having been engaged in work of national importance connected with such hostilities) an application under this section may be made by originating summons instead of by petition, and the Court in considering its decision may have regard solely to the loss or damage so suffered by the patentee:

Provided that this subsection shall not apply if the patentee is a subject of such foreign state as aforesaid, or is a company the business whereof is managed or controlled by such subjects or is carried on wholly or mainly for the benefit or on behalf of such subjects, notwithstanding that the company may be registered within Her Majesty's Dominions.

30 of 1949,
s. 8.

(7) Where an application is made under subsection (6) of this section—

(a) the power conferred on the Court by the proviso to subsection (1) of this section to allow the application to be made at such time as the Court may in its discretion think fit shall be exercisable free from the restriction imposed by that proviso that the time allowed must be not later than the time limited for the expiration of the patent, if the Court is satisfied that the allowance of a time later than the expiration thereof is justified by the patentee's having been prevented from making the application by being on active service or by other circumstances arising by reason of hostilities between Her Majesty and any foreign state;

(b) an order may be made notwithstanding that the term of the patent may have been previously extended, or that a new patent for the invention may have been previously granted, by one or more orders made under this section, and

notwithstanding that the previous order, or one of the previous orders, may have been made otherwise than pursuant to an application under subsection (6) of this section;

(c) the restriction imposed by subsection (5) of this section on the length of the further term for which a patent may be extended shall not have effect, but the term granted by an order, whether by way of extension or grant of a new patent, shall not exceed ten years, and, where two or more orders are made pursuant to applications under subsection (6) of this section in relation to the same invention, the aggregate of the terms thereby granted, whether by way of extension or grant of a new patent, shall not exceed ten years.

(8) In any case where an application could be made to the Court under subsection (6) of this section— 30 of 1949,
s. 8.

(a) the application may, at the option of the patentee, be made in the prescribed manner to the Registrar instead of to the Court, and the foregoing provisions of this section shall apply, so far as applicable and subject to the necessary modifications, to such an application in like manner as they apply to an application to the Court under the said subsection (6), except that the requirement imposed on an applicant by subsection (1) of this section to advertise his intention to make the application shall be dispensed with;

(b) if the Registrar considers that the application raises issues of a kind that would be more fittingly decided by the Court, he may, if he thinks fit, refer the application for decision by the Court;

(c) an appeal shall lie to the Appeal Tribunal from any decision of the Registrar on an application made under this subsection, and on such an appeal the applicant and any other parties to the proceedings shall be entitled to appear and be heard, and the Registrar shall also be entitled to appear and be heard and shall appear if so directed by the Tribunal.

(9) In the case of a patent limited to expire after the 3rd September, 1939, and before the expiration of six months from the 31st December, 1949, an application under subsection (6) of this section may be made at any time during the said six months, and the Court may allow the application to be made at such time as the Court may in its discretion think fit if the Court is satisfied that the allowance of a time later than the expiration of the said six months is justified by the applicant's having been 30 of 1949,
s. 8.

prevented from making the application by being on active service or by other circumstances arising by reason of hostilities between His late Majesty and any foreign state.

Patents of
addition.

23. (1) Where a patent for an invention has been applied for or granted, and the applicant or the patentee, as the case may be, applies for a further patent in respect of any improvement in or modification of the invention, he may, if he thinks fit, in his application for the further patent, request that the term limited in that patent for the duration thereof be the same as that of the original patent or so much of that term as is unexpired.

(2) Where an application containing such a request is made, a patent of addition may be granted for such term as aforesaid.

(3) Where an invention, being an improvement in or modification of an original invention, is the subject of an independent patent and the patentee in respect of the independent patent, being also the patentee in respect of the patent for the original invention, so requests, the Registrar may make an order for the revocation of the independent patent and a patent of addition may be granted in respect of the improvement or modification bearing the same date as the date of the independent patent so revoked.

(4) A patent of addition shall remain in force during the term limited in the patent for the original invention or until the previous cesser thereof and no longer, but may be extended under the last foregoing section for any period for which the patent for the original invention is extended thereunder, and in respect of a patent of addition no fees shall be payable for renewal:

Provided that, if the patent for the original invention is revoked, then the patent of addition shall, if the Court or Registrar so orders, become an independent patent, and the fees payable, and the dates when they become payable, shall be determined by its date, but its duration shall not exceed the unexpired term of the patent for the original invention.

(5) The grant of a patent of addition shall be conclusive evidence that the invention is a proper subject for a patent of addition, and the validity of the patent shall not be questioned on the ground that the invention ought to have been the subject of an independent patent.

RESTORATION OF LAPSED PATENTS.

24. (1) Where any patent has become void owing to the failure of the patentee to pay any prescribed fee within the prescribed time, the patentee may apply to the Registrar in the prescribed manner for an order for the restoration of the patent.

Restoration
of lapsed
patents.

(2) Every such application shall contain a statement of the circumstances which have led to the omission of the payment of the prescribed fee.

(3) If it appears from such statement that the omission was unintentional and that no undue delay has occurred in the making of the application, the Registrar shall advertise the application in the prescribed manner, and within such time as may be prescribed any person may give notice of opposition at the Patent Office.

(4) Where such notice is given the Registrar shall notify the applicant thereof.

(5) After the expiration of the prescribed period the Registrar shall hear the case and issue an order either restoring the patent or dismissing the application:

Provided that the Registrar may, if he thinks fit, as a condition of issuing an order under this section restoring a patent require that an entry shall be made in the register of patents in respect of any document or instrument in respect of which the provisions of this Ordinance as to entries in the register have not been complied with.

(6) In every order under this section restoring a patent such provision as may be prescribed shall be inserted for the protection of persons who may have availed themselves of the subject matter of the patent after the patent had been announced as void in the Gazette.

(7) An appeal shall lie from the decision of the Registrar under this section to the Court.

AMENDMENT OF SPECIFICATION.

25. (1) An applicant at any time after acceptance of his complete specification or a patentee at any time may by request in writing left at the Patent Office, seek leave to amend his specification, including drawings forming part thereof, by way of disclaimer, correction, or explanation, stating the nature of, and the reasons for, the proposed amendment.

Amendment
of specifica-
tion by
Registrar.

(2) The request and the nature of the proposed amendment shall be advertised in the prescribed manner, and at any time within one month from its first advertisement any person may give notice at the Patent Office of opposition to the amendment.

(3) Where such a notice is given the Registrar shall give notice of the opposition to the person making the request, and shall hear and decide the case.

(4) Where no notice of opposition is given, or the person so giving notice of opposition does not appear, the Registrar shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(5) The decision of the Registrar in either case shall be subject to an appeal, where the person making the request to amend is a patentee, to the Court, and, where the person making the request to amend is an applicant for a patent, to the Appeal Tribunal and the Court or the Tribunal, as the case may be, shall, if required, hear the person making the request to amend, and, where notice of opposition has been given the person giving that notice, if he is in the opinion of the Court or of the Tribunal, as the case may be, entitled to be heard in opposition to the request, and, where there is no opposition, the Registrar, and may make an order determining whether and subject to what conditions (if any) the amendment ought to be allowed.

(6) No amendment shall be allowed that would make the specification, as amended, claim an invention substantially larger than or substantially different from the invention claimed by the specification as it stood before amendment.

(7) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall be advertised in the prescribed manner, and shall in all courts and for all purposes be deemed to form part of the specification:

Provided that the Court shall be entitled in construing a specification as amended to refer to the specification as accepted and published.

(8) This section shall not apply when and so long as any action for infringement or proceeding before the Court for the revocation of a patent is pending.

Amendment
of specifica-
tion by the
Court.

26. In any action for infringement of a patent or proceedings before a court for the revocation of a patent the Court may by order allow the patentee to amend his specification by way of

disclaimer, correction or explanation in such manner, and subject to such terms as to costs, advertisements or otherwise, as the Court may think fit:

Provided that no amendment shall be so allowed that would make the specification, as amended, claim an invention substantially larger than, or substantially different from, the invention claimed by the specification as it stood before the amendment, and where an application for such an order is made to the Court notice of the application shall be given to the Registrar, and the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court.

27. Where an amendment of a specification by way of disclaimer, correction, or explanation, has been allowed under this Ordinance, no damages shall be given in any action in respect of the use of the invention before the date of the decision allowing the amendment, unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge.

Restrictions on recovery of damages.

COMPULSORY LICENCES AND REVOCATION.

28. (1) At any time after the sealing of a patent the Registrar shall, if the patentee so requests, cause the patent to be endorsed with the words "licences of right," and a corresponding entry to be made in the register, and thereupon—

Provision as to patents endorsed "licences of right".

(a) any person shall at any time thereafter be entitled as of right to a licence under the patent upon such terms as, in default of agreement, may be settled by the Registrar on the application of either the patentee or the applicant:

Provided that any licence the terms of which are settled by agreement shall be deemed, unless otherwise expressly provided, to include the terms and conditions specified in paragraphs (c) and (d) of this subsection as if they had been imposed by the Registrar thereunder in like manner as if the terms had been settled by the Registrar;

(b) in settling the terms of any such licence the Registrar shall be guided by the following considerations—

(i) he shall, on the one hand, endeavour to secure the widest possible user of the invention in the Colony consistent with the patentee deriving a reasonable advantage from his patent rights;

(ii) he shall, on the other hand, endeavour to secure to the patentee the maximum advantage consistent with the invention being worked by the licensee at a reasonable profit in the Colony;

(iii) he shall also endeavour to secure equality of advantage among the several licensees, and for this purpose may, on due cause being shown, reduce the royalties or other payments accruing to the patentee under any licence previously granted:

Provided that, in considering the question of equality of advantage, the Registrar shall take into account any work done or outlay incurred by any previous licensee with a view to testing the commercial value of the invention or to securing the working thereof on a commercial scale in the Colony.

(c) any such licence the terms of which are settled by the Registrar may be so framed as to preclude the licensee from importing into the Colony any goods the importation of which, if made by persons other than the patentee or those claiming under him, would be an infringement of the patent, and in such a case the patentee and all licensees under the patent shall be deemed to have mutually covenanted against such importation;

(d) every such licensee shall be entitled to call upon a patentee to take proceedings to prevent the infringement of the patent, and if the patentee refuses, or neglects to do so within two months after being so called upon, the licensee may institute proceedings for the infringement in his own name as though he were patentee, making the patentee a defendant. A patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings. Service on him may be effected by leaving the writ at his address for service given on the register;

(e) if in any action for infringement of a patent so endorsed the infringing defendant is ready and willing to take a licence upon terms to be settled by the Registrar, no injunction against him shall be awarded, and the amount recoverable against him by way of damages (if any) shall not exceed double the amount which would have been recoverable against him as licensee if the licence had been dated prior to the earliest infringement:

Provided that this paragraph shall not apply where the infringement consists of the importation of infringing goods;

(f) the renewal fees payable by the patentee of a patent so endorsed shall, as from the date of the endorsement, be one moiety only of the fees which would otherwise have been payable.

(2) The Registrar shall, before acting on any request to endorse a patent made by the patentee under this section, advertise such request in the Gazette and shall satisfy himself that the patentee is not precluded by contract from making such request, and for that purpose shall require from the patentee such evidence, by statutory declaration or otherwise, as he may deem necessary:

Provided that a patentee shall not be deemed to be so precluded by reason only of his having granted a licence under the patent where the licence does not limit his right to grant other licences.

(3) Any person, alleging that a request under this section has been made contrary to some contract in which he is interested, may apply to the Registrar within the prescribed time and in the prescribed manner, and the Registrar, if satisfied of the truth of such allegation, shall refuse to endorse the patent pursuant to the request or shall cause the endorsement, if already made, to be cancelled.

(4) Where a patent of addition is in force any request made under this section for an endorsement either of the original patent or of the patent of addition shall be treated as a request for the endorsement of both patents, and if refused as respects the one shall be refused as respects the other also, and where a patent of addition is granted in respect of a patent which is endorsed under this section the patent of addition shall also be so endorsed.

(5) All endorsements of patents under this section shall be entered on the register of patents and shall be published in the Gazette, and in such other manner as to the Registrar may seem desirable for the purpose of bringing the invention to the notice of manufacturers.

(6) The Registrar may, if he thinks fit, on the application of the patentee and on payment by him of the unpaid moiety of all renewal fees which have become due since the endorsement, cancel the endorsement, and in that case the patentee's rights and liabilities shall be the same as if no such endorsement had been made;

Provided that before acting on any application for the cancellation of an endorsement, the Registrar shall advertise the application in the prescribed manner and shall satisfy himself that there is no existing licence or that all existing licensees consent to the application.

(7) Any person may within the prescribed time and in the prescribed manner, give notice at the Patent Office of opposition to an application for the cancellation of an endorsement, and where any such notice is given the Registrar shall, after giving notice of the opposition to the applicant and after giving to the applicant and to the opponent an opportunity of being heard, decide on the case.

(8) Any decision of the Registrar under this section shall be subject to an appeal to the Court.

Revocation
of patent.

29. (1) Revocation of a patent may be obtained on petition to the Court.

Grounds for
revocation
of patent.

(2) A patent may be revoked upon any of the following grounds—

(a) that the invention was the subject of a valid prior grant;

(b) that the true and first inventor was not the applicant or one of the applicants for the patent;

(c) that the patent was obtained in fraud of rights of the person applying for the order or of any person under or through whom he claims;

(d) that the invention is not a manner of new manufacture the subject of letters patent and grant of privilege within section 6 of the Statute of Monopolies;

(e) subject as in this subsection provided, that the invention is not new;

(f) that the invention is obvious and does not involve any inventive step having regard to what was known or used prior to the date of the patent;

(g) that the invention is not useful;

(h) that the complete specification does not sufficiently and fairly describe and ascertain the nature of the invention and the manner in which the invention is to be performed;

(i) that the complete specification does not sufficiently and clearly ascertain the scope of the monopoly claimed;

(j) that the complete specification does not disclose the best method of performance of the invention known to the applicant for the patent at the time when the specification was left at the Patent Office;

(k) that the patent was obtained on a false suggestion or representation;

(l) that the invention claimed in the complete specification is not the same as that contained in the provisional specification, and that the invention claimed, so far as it is not contained in the provisional specification was not new at the date when the complete specification was filed, or the true and first inventor was not the applicant, or one of the applicants, for the patent;

(m) that the primary or intended use or exercise of the invention is contrary to law;

(n) that the patentee has contravened or has not complied with the conditions contained in the patent;

(o) that prior to the date of the patent the invention was secretly worked on a commercial scale and not merely by way of reasonable trial or experiment in British Guiana by the patentee or others, not being a Government department or the agents or contractors of, or other person authorised in that behalf by, a Government department;

(p) that, in the case of a patent bearing a date within any war period as defined by subsection (3) of section 33 of this Ordinance, the invention was secretly worked prior to that date by a Government department or the agents or contractors of, or other person authorised in that behalf by, a Government department, otherwise than in consequence of the communication or disclosure of the invention by the applicant for the patent directly or indirectly to a Government department;

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(q) that, in the case of inventions relating to substances prepared or produced by chemical processes or intended for food or medicine, the specification includes claims which under section 44 of this Ordinance cannot lawfully be made; or

upon any other ground upon which a patent might, immediately before the 6th December, 1902, have been repealed by *scire facias*:

Provided that this subsection shall have effect, as respects the ground of revocation specified in paragraph (e) thereof, subject to the provisions of subsection (1) of section 19, subsection (12) of section 34, section 45 and section 50 of this Ordinance.

(3) Every ground on which a patent may be revoked shall be available as a ground of defence in an action for infringement of a patent.

(4) A petition for revocation of a patent may be presented—

(a) by the Attorney General or any person authorised by him; or

(b) by any person alleging—

(i) that the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims; or

(ii) that he, or any person under or through whom he claims, was the true inventor of any invention included in the claim of the patentee; or

(iii) that he, or any person under or through whom he claims an interest in any trade, business, or manufacture, had publicly manufactured, used, or sold, within this Colony, before the date of the patent, anything claimed by the patentee as his invention.

Power of
Registrar
to revoke
patents.

30. (1) Any person who would have been entitled to oppose the grant of a patent or is the successor in interest of a person who was so entitled may within twelve months from the date of sealing the patent, apply to the Registrar for an order revoking the patent on any one or more of the grounds on which the grant of the patent might have been opposed:

Provided that when an action for infringement or proceedings for the revocation of the patent are pending in any court, an application under this section shall not be made except with the leave of the Court.

(2) The Registrar shall give notice of the application to the patentee, and after hearing the parties, if desirous of being heard, may make an order revoking the patent or requiring the specification relating thereto to be amended by disclaimer, correction, or explanation, or dismissing the application; but the Registrar shall not make an order revoking the patent unless the circumstances are such as would have justified him in refusing to grant the patent had the proceedings been proceedings in an opposition to the grant of a patent.

(3) A patentee may at any time by giving notice in the prescribed manner to the Registrar offer to surrender his patent, and the Registrar may, if after giving notice of the offer and

hearing all parties who desire to be heard he thinks fit, accept the offer and thereupon make an order for the revocation of the patent.

(4) Any decision of the Registrar under this section shall be subject to appeal to the Court.

31. (1) Any person interested may at any time after the expiration of three years from the date of sealing a patent apply to the Registrar alleging in the case of that patent that there has been an abuse of the monopoly rights thereunder and asking for relief under this section.

Provisions
for preven-
tion of abuse
of monopoly
rights.

(2) The monopoly rights under a patent shall be deemed to have been abused in any of the following circumstances—

(a) if the patented invention (being one capable of being worked in the Colony), is not being worked within the Colony on a commercial scale, and no satisfactory reason can be given for such non-working:

Provided that, if an application is presented to the Registrar on this ground, and the Registrar is of opinion that the time which has elapsed since the sealing of the patent has by reason of the nature of the invention or for any other cause been insufficient to enable the invention to be worked within the Colony on a commercial scale, the Registrar may make an order adjourning the application for such period as will in his opinion be sufficient for that purpose;

(b) if the working of the invention within the Colony on a commercial scale is being prevented or hindered by the importation from abroad of the patented article by the patentee or persons claiming under him, or by persons directly or indirectly purchasing from him, or by other persons against whom the patentee is not taking or has not taken any proceedings for infringement;

(c) if the demand for the patented article in the Colony is not being met to an adequate extent and on reasonable terms;

(d) if, by reason of the refusal of the patentee to grant a licence or licences upon reasonable terms, the trade or industry of the Colony or the trade of any person or class of persons trading in the Colony, or the establishment of any new trade or industry in the Colony, is prejudiced, and it is in the public interest that a licence or licences should be granted;

(e) if any trade or industry in the Colony, or any person or class of persons engaged therein, is unfairly prejudiced by the conditions attached by the patentee, whether before or after the passing of this Ordinance, to the purchase, hire, licence, or use of the patented article, or to the using or working of the patented process;

Provisions
as to unfair
exercise of
process
patent.

(f) if it is shown that the existence of the patent, being a patent for an invention relating to a process involving the use of materials not protected by the patent or for an invention relating to a substance produced by such a process, has been utilised by the patentee so as unfairly to prejudice in the Colony the manufacture, use or sale of any such materials:

Provided that, for the purpose of determining whether there has been any abuse of the monopoly rights under a patent, it shall be taken that patents for new inventions are granted not only to encourage invention but to secure that new inventions shall so far as possible be worked on a commercial scale in the Colony without undue delay.

30 of 1949,
s. 10.

(3) On being satisfied that a case of abuse of the monopoly rights under a patent has been established, the Registrar may exercise any of the following powers as he may deem expedient in the circumstances—

(a) he may order the patent to be endorsed with the words "licences of right" and thereupon the same rules shall apply as are provided in this Ordinance in respect of patents so endorsed, and an exercise by the Registrar of this power shall entitle every existing licensee to apply to the Registrar for an order entitling him to surrender his licence in exchange for a licence to be settled by the Registrar in like manner as if the patent had been so endorsed at the request of the patentee, and the Registrar may make such order; and an order that a patent be so endorsed may be made notwithstanding that there may be an agreement subsisting which would have precluded the endorsement of the patent at the request of the patentee;

(b) he may order the grant to the applicant of a licence on such terms as the Registrar may think expedient, including a term precluding the licensee from importing into the Colony any goods the importation of which, if made by persons other than the patentee or persons claiming under him, would be an infringement of the patent, and in such case the patentee and all licensees for the time being shall be deemed to have mutually covenanted against such importation. A licensee under this paragraph shall be

entitled to call upon the patentee to take proceedings to prevent infringement of the patent, and if the patentee refuses, or neglects to do so within two months after being so called upon, the licensee may institute proceedings for infringement in his own name as though he were the patentee, making the patentee a defendant. A patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings. Service on him may be effected by leaving the writ at his address for service given on the register.

In settling the terms of a licence under this paragraph the Registrar shall be guided as far as may be by the same considerations as are specified in section 28 of this Ordinance for his guidance in settling licences under that section;

(c) if the Registrar is satisfied that the invention is not being worked on a commercial scale in the Colony, and is such that it cannot be so worked without the expenditure of capital for the raising of which it will be necessary to rely on the patent monopoly, he may, unless the patentee or those claiming under him will undertake to find such capital, order the grant to the applicant, or any other person, or to the applicant and any other person or persons jointly, if able and willing to provide such capital, of an exclusive licence on such terms as the Registrar may think just, but subject as hereinafter provided;

(d) if the Registrar is satisfied that the monopoly rights have been abused in the circumstances specified in paragraph (f) of the last preceding subsection, he may order the grant of licences to the applicant and to such of his customers and containing such terms as the Registrar may think expedient;

(e) if the Registrar is of opinion that the objects of this section will be best attained by making no order under the above provisions of this section, he may make an order refusing the application and dispose of any question as to costs thereon as he thinks just.

(4) In settling the terms of any such exclusive licence as is provided in paragraph (c) of the last preceding subsection, due regard shall be had to the risks undertaken by the licensee in providing the capital and working the invention, but, subject thereto, the licence shall be so framed as—

(a) to secure to the patentee the maximum royalty compatible with the licensee working the invention in the Colony on a commercial scale and at a reasonable profit;

(b) to guarantee to the patentee a minimum yearly sum by way of royalty, if and so far as it is reasonable so to do, having regard to the capital requisite for the proper working of the invention and all the circumstances of the case;

and, in addition to any other powers expressed in the licence or order, the licence and the order granting the licence shall be made revocable at the discretion of the Registrar if the licensee fails to expend the amount specified in the licence as being the amount which he is able and willing to provide for the purpose of working the invention on a commercial scale within the Colony, or if he fails so to work the invention within the time specified in the order.

(5) In deciding to whom such an exclusive licence is to be granted the Registrar shall, unless good reason is shown to the contrary, prefer an existing licensee to a person having no registered interest in the patent.

(6) The order granting an exclusive licence under this section shall operate to take away from the patentee any right which he may have as patentee to work or use the invention and to revoke all existing licences, unless otherwise provided in the order, but on granting an exclusive licence the Registrar may, if he thinks it fair and equitable, make it a condition that the licensee shall give proper compensation to be fixed by the Registrar for any money or labour expended by the patentee or any existing licensee in developing or exploiting the invention.

30 of 1949,
s. 10.

(7) If an application is made under subsection (1) of this section in relation to a patent, and—

(a) an order has already been made in relation to that patent under paragraph (b), (c) or (d) of subsection (3) of this section;

(b) a period of not less than two years has elapsed between the date of that order and the date of the application; and

(c) the Registrar is satisfied that the objects of this section cannot be attained by the exercise of any of the powers conferred by the said subsection (3)—

the Registrar may order the patent to be revoked, either forthwith, or after such reasonable interval as may be specified in the order, unless in the meantime such conditions as may be prescribed in the order with a view to attaining the objects of this section are fulfilled, and the Registrar may, on reasonable cause shown in any case, by subsequent order extend the interval so specified:

Provided that the Registrar shall make no order for revocation which is at variance with any treaty, convention, arrangement or engagement applying to the United Kingdom and to any foreign country or part of Her Majesty's dominions outside the United Kingdom.

(8) Every application presented to the Registrar under this section must set out fully the nature of the applicant's interest and the facts upon which the applicant bases his case and the relief which he seeks. The application must be accompanied by statutory declarations verifying the applicant's interest and the facts set out in the application.

(9) The Registrar shall consider the matters alleged in the application and declarations, and, if satisfied that the applicant has a *bona fide* interest and that a *prima facie* case for relief has been made out, he shall direct the applicant to serve copies of the application and declarations upon the patentee and upon any other persons appearing from the register to be interested in the patent and shall advertise the application in the Gazette.

(10) If the patentee or any person is desirous of opposing the granting of any relief under this section, he shall, within such time as may be prescribed or within such extended time as the Registrar may on application (made either before or after the expiration of the prescribed time) further allow, deliver to the Registrar a counter statement verified by a statutory declaration fully setting out the grounds on which the application is to be opposed.

30 of 1949,
s. 10.

(11) The Registrar shall consider the counter statement and declarations in support thereof and may thereupon dismiss the application if satisfied that the allegations in the application have been adequately answered, unless any of the parties demands a hearing or unless the Registrar himself appoints a hearing. In any case the Registrar may require the attendance before him of any of the declarants to be cross-examined or further examined upon matters relevant to the issues raised in the application and counter statement, and he may, subject to due precautions against disclosure of information to rivals in trade, require the production before him of books and documents relating to the matter in issue.

30 of 1949,
s. 10.

(12) All orders of the Registrar under this section shall be subject to appeal to the Court, and on any such appeal the Attorney General or such other counsel as he may appoint shall be entitled to appear and be heard.

(13) In any case where the Registrar does not dismiss an application as hereinbefore provided, and

(a) if the parties interested consent; or

(b) if the proceedings require any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the Registrar conveniently be made before him;

the Registrar may at any time order the whole proceedings or any question or issue of fact arising thereunder to be referred to an arbitrator agreed on by the parties, or in default of agreement appointed by the Registrar, and, where the whole proceedings are so referred, the award of such arbitrator shall, if all the parties consent, be final, but otherwise shall be subject to the same appeal as the decision of the Registrar under this section, and, where a question or issue of fact is so referred, the arbitrator shall report his findings to the Registrar.

30 of 1949,
s. 11.

(14) The provisions of subsection (7) of this section shall apply to—

(a) patents in force at, as well as to patents granted on or after, the 31st December, 1949;

(b) applications for patents made before, as well as to applications made on or after, the 31st December, 1949.

(15) For the purposes of this section, the expression “patented article” includes articles made by a patented process.

REGISTER OF PATENTS.

Register of
patents.

32. (1) There shall be kept at the Patent Office a book called the register of patents, wherein shall be entered the names and addresses of grantees of patents, notifications of assignments and of transmissions of patents, of licences under patents, and of amendments, extensions, and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may be prescribed.

(2) The register of patents existing at the commencement of this Ordinance shall be incorporated with and form part of the register of patents under this Ordinance.

(3) The register of patents shall be *prima facie* evidence of any matters by this Ordinance directed or authorised to be inserted therein.

(4) Copies of deeds, licences, and any other documents affecting the proprietorship in any letters patent or in any licence thereunder, must be supplied to the Registrar in the prescribed manner for filing in the Patent Office.

CROWN.

33. (1) A patent shall have to all intents the like effect as against Her Majesty the Queen as it has against a subject:

Right of
Crown and
Colony to
use
patented
inventions.

Provided that any Government department may, by themselves or by such of their agents, contractors, or others as may be authorised in writing by them at any time after the application, make, use or exercise the invention for the services of the Crown or the Colony on such terms as may, either before or after the use thereof, be agreed on, with the approval of the Governor, between the department and the patentee, or, in default of agreement, as may be settled in the manner hereinafter provided. And the terms of any agreement or licence concluded between the inventor or patentee and any person other than a Government department, shall be inoperative so far as concerns the making, use or exercise of the invention for the service of the Crown or of the Colony:

Provided further that, where an invention which is the subject of any patent has, before the date of the patent, been duly recorded in a document by, or tried by or on behalf of, any Government department (such invention not having been communicated directly or indirectly by the applicant for the patent or the patentee), any Government department, or such of their agents, contractors, or others as may be authorised in writing by them, may make, use and exercise the invention so recorded or tried for the service of the Crown or of the Colony free of any royalty or other payment to the patentee, notwithstanding the existence of the patent. If in the opinion of the department the disclosure to the applicant or the patentee, as the case may be, of the document recording the invention, or the evidence of the trial thereof, if required, would be detrimental to the public interest, it may be made confidentially to counsel on behalf of the applicant or patentee, or to any independent expert mutually agreed upon.

*(2) The power of a Government department under subsection (1) of this section to make, use or exercise an invention for the services of the Crown shall include power during any war period to make, use, exercise or vend an invention, upon such terms as are mentioned in the said subsection (1), for any purpose which appears to the department necessary or expedient for the efficient prosecution of any war in which Her Majesty may be engaged or for the maintenance of supplies and services essential to the life of the community; and the terms of any such agreement or licence as is mentioned

30 of 1949,
s. 12.

*Subsection (2) is deemed to have come into operation on the 3rd September, 1939, (30 of 1949, s. 12 (2)).

in the said subsection (1) shall be inoperative so far as concerns the making, use, exercise or vending of an invention under this subsection as they are inoperative so far as concerns the making, use or exercise of an invention under that subsection.

30 of 1949,
s. 12.

* (3) For the purposes of subsection (2) of this section the expression "war period" means the period beginning with the 3rd September, 1939, and ending with the expiration of the Emergency Powers (Defence) Act, 1939, or any other period beginning with such date as may be declared by Order of Her Majesty in Council to be the commencement, and ending with such date as may be so declared to be the termination, of a war period for the purpose of this section; and nothing in subsection (5) of this section shall affect the right to vend an invention conferred by subsection (2) of this section.

30 of 1949,
s. 12.

† (4) In case of any dispute as to the making, use, exercise or vending of an invention under this section, or the terms thereof, or as to the existence or scope of any record or trial as aforesaid, the matter shall be referred to the Court for decision, which shall have power to refer the whole matter or any question or issue of fact arising thereon to be tried before an arbitrator upon such terms as it may direct. The Court or arbitrator, as the case may be, may, with the consent of the parties, take into consideration the validity of the patent for the purposes only of the reference and for the determination of the issues between the applicant and such Government department. The Court or arbitrator further in settling the terms as aforesaid, shall be entitled to take into consideration any benefit or compensation which the patentee, or any other person interested in the patent, may have received directly or indirectly from the Crown or the Colony or from any Government department in respect of such patent.

(5) The right to use an invention for the services of the Crown or the Colony under the provisions of this section or any provisions for which this section is substituted shall include, and shall be deemed always to have included, the power to sell any articles made in pursuance of such right which are no longer required for the services of the Crown or the Colony.

30 of 1949,
s. 12.

(6) A purchaser of any article sold in pursuance of subsection (2) or subsection (5) of this section, and any person claiming

*Subsection (3) is deemed to have come into operation on the 3rd September, 1939, (30 of 1949, s. 12 (2)).

†In this subsection the substitution of the words "exercise or vending" for the words "or exercise" is deemed to have come into operation on the 3rd September, 1939, (30 of 1949, s. 12 (2)).

through him, shall have, and be deemed always to have had, power to deal with the articles in like manner as if the patent for the invention were held on behalf of Her Majesty.

(7) Nothing in this section shall affect the right of the Crown or the Colony or of any person deriving title directly or indirectly from the Crown or the Colony to sell or use any articles forfeited under the laws relating to the customs or excise.

34. (1) The inventor of any improvement in instruments or munitions of war may (either for or without valuable consideration) assign to the Governor on behalf of Her Majesty all the benefit of the invention and of any patent obtained or to be obtained for the invention; and the Governor may be a party to the assignment.

Assignment
to Governor
of certain
inventions.

(2) The assignment shall effectually vest the benefit of the invention and patent in the Governor on behalf of Her Majesty, and all covenants and agreements therein contained for keeping the invention secret and otherwise shall be valid and effectual (notwithstanding any want of valuable consideration), and may be enforced accordingly by the Governor.

(3) Where any such assignment has been made, the Governor may at any time before the publication of the complete specification certify to the Registrar that, in the interest of the public service, the particulars of the invention and of the manner in which it is to be performed should be kept secret.

(4) If the Governor so certify the application and specifications, with the drawings (if any), and any amendment of the complete specification, and any copies of such documents and drawings shall, instead of being left in the ordinary manner at the Patent Office, be delivered to the Registrar in a packet sealed by authority of the Governor.

(5) The packet shall, until the expiration of the term during which a patent for the invention may be in force, be kept sealed by the Registrar, and shall not be opened save under the authority of an order of the Governor.

(6) The sealed packet shall be delivered at any time during the continuance of the patent to any person authorised by the Governor to receive it, and shall if returned to the Registrar be again kept sealed by him.

(7) On the expiration of the term of the patent, the sealed packet shall be delivered to the Governor.

(8) Where the Governor certifies as aforesaid, after an application for a patent has been left at the Patent Office, but before the publication of the complete specification, the application and specifications, with the drawings (if any), shall be forthwith placed in a packet sealed by authority of the Registrar, and the packet shall be subject to the foregoing provisions respecting a packet sealed by authority of the Governor.

(9) No proceeding by petition or otherwise shall lie for revocation of a patent granted for an invention in relation to which a certificate has been given by the Governor as aforesaid.

(10) No copy of any specification or other document or drawing, by this section required to be placed in a sealed packet, shall in any manner whatever be published or open to the inspection of the public, but, save as in this section otherwise directed, the provisions of this Ordinance shall apply in respect of any such invention and patent as aforesaid.

(11) The Governor may at any time waive the benefit of this section with respect to any particular invention, and the specifications, documents, and drawings shall be thenceforth kept and dealt with in the ordinary way.

(12) The communication of any invention for any improvement in instruments or munitions of war to the Governor or to any person or persons authorised by the Governor to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed use or publication of such invention so as to prejudice the grant or validity of any patent for the same.

(13) Regulations may be made under this Ordinance for the purpose of ensuring secrecy with respect to patents to which this section applies, and those regulations may modify any of the provisions of this Ordinance in their application to such patents as aforesaid so far as may appear necessary for the purpose aforesaid.

LEGAL PROCEEDINGS.

35. (1) In an action or proceeding for infringement or revocation of a patent, the Court may, if it think fit, and shall on the request of all of the parties to the proceeding, call in the aid of an assessor specially qualified, and try the case wholly or partially with his assistance; the action shall be tried without a jury unless the Court otherwise directs.

Hearing
with
assessor.

(2) The Court of Appeal may, if they think fit, in any proceeding before them call in the aid of an assessor as aforesaid.

Court of Appeal.

(3) The remuneration, if any, to be paid to an assessor under this section shall be determined by the Court or the Court of Appeal, as the case may be, and be paid as part of the expenses of the execution of this Ordinance.

36. A defendant in an action for infringement of a patent, may, without presenting a petition, apply in accordance with the rules of the Supreme Court by way of counter-claim in the action for the revocation of the patent.

Power to counter-claim for revocation in an action for infringement.

37. Where the Court in any action for infringement of a patent finds that any claim in the specification, in respect of which infringement is alleged, is valid, but that any other claim therein is invalid, then, notwithstanding anything in section 27 of this Ordinance—

Power of Court in infringement action as regards relief in respect of particular claims.

(a) if the patentee furnishes proof to the satisfaction of the Court that the invalid claim was framed in good faith and with reasonable skill and knowledge, or if the patent is dated before the commencement of this Ordinance, the Court shall, subject to its discretion as to costs and as to the date from which damages should be reckoned, and to such terms as to amendment of the specification as it may deem desirable, grant relief in respect of any valid claim which is infringed without regard to the invalidity of any other claim in the specification and in exercising such discretion the Court may take into consideration the conduct of the parties in inserting the invalid claim in the specification or permitting that claim to remain there;

(b) if the patentee does not furnish proof as aforesaid, and the patent is dated after the commencement of this Ordinance, the Court shall not grant any relief by way of damages or costs, but may grant such other relief in respect of any valid claim which is infringed as to the Court seems just, and may impose such terms as to amendment of the specification as a condition of granting any such relief as it may deem desirable;

(c) if a counter-claim for revocation of the patent has been made in the action on the ground of the invalidity of any claim in the specification, the Court may postpone the operation of any order made thereon during such time as may be requisite for enabling the patentee to effect any amendment of the specification pursuant to terms imposed upon him and may attach any such other condition to any order to be made on the counter-claim as the Court may deem desirable.

Exemption
of innocent
infringer
from liability
for damages.

38. A patentee shall not be entitled to recover any damages in respect of any infringement of a patent granted after the commencement of this Ordinance from any defendant who proves that at the date of the infringement he was not aware, nor had reasonable means of making himself aware, of the existence of the patent, and the marking of an article with the word "patent," "patented," or any word or words expressing or implying that a patent has been obtained for the article, stamped, engraved, impressed on, or otherwise applied to the article, shall not be deemed to constitute notice of the existence of the patent unless the word or words are accompanied by the number of the patent:

Provided that nothing in this section shall affect any proceedings for an injunction.

Order for
inspection,
etc., in
action.

39. In an action for infringement of a patent, the plaintiff shall be entitled to relief by way of injunction and damages but not to an account of profits, but subject as aforesaid the Court may on the application of either party make such order for an injunction or inspection, and impose such terms and give such directions respecting the same and the proceedings thereon as the Court may see fit.

Certificate
of validity
questioned
and costs
thereon.

40. In an action for infringement of a patent, the Court may certify that the validity of any claim in the specification of the patent came in question; and, if the Court so certifies, then in any subsequent action for infringement of such claim the plaintiff in that action on obtaining a final order or judgment in his favour shall, unless the Court trying the action otherwise directs, have his full costs, charges, and expenses as between solicitor and client so far as that claim is concerned.

Remedy in
case of
groundless
threats of
legal
proceedings.

41. (1) Where any person, by circulars, advertisements or otherwise, threatens any person with an action for infringement of patent or other like proceedings, then, whether the person making the threats is or is not entitled to or interested in a patent or an application for a patent, any person aggrieved thereby may bring an action against him, and may obtain a declaration to the effect that such threats are unjustifiable and an injunction against the continuance of such threats and may recover such damage, if any, as he has sustained thereby, unless the person making the threats proves that the acts in respect of which the proceedings are threatened constitute or, if done, would constitute an infringement of a patent in respect of a claim in the specification which is not shown by the plaintiff to