



PATENTS ACT

Revised Edition
showing the law as at 30 June 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014.

This edition contains a consolidation of the following laws—

PATENTS ACT

Act 3 of 1906 .. in force 1 September 1906

Amended by Acts: 21 of 1921

33 of 1961 .. in force 28 October 1961

13 of 1985 .. in force 8 August 1985

5 of 1991 .. in force 1 May 1990

12 of 2001 .. in force 1 January 2002 (S.I. 51/2001)

Amended by S.R.O.: 22/1956 .. in force 1 July 1956

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PATENTS ACT
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PATENTS ACT

(Acts 3 of 1906, 21 of 1921, 33 of 1961, 13 of 1985, 5 of 1991, 12 of 2001 and S.R.O. 22/1956)

Commencement

[1 September 1906]

Short title

1. This Act may be cited as the Patents Act.

Interpretation

2. In this Act—

“British Possession” means any territory or place situate within Her Majesty’s dominions and not being or forming part of the United Kingdom or of the Channel Islands or of the Isle of Man; and all territories and places under one legislature as hereinafter defined are deemed to be one British Possession for the purposes of this Act;

“Commission” means the Financial Services Commission established under the Financial Services Commission Act; *(Inserted by Act 12 of 2001)*

“Court” means the High Court;

“examiner” means any skilled person or persons to whom the Registrar shall refer questions concerning patents under this Act;

“legislature” includes any person or persons who exercise legislative authority in the British possession and where there are local legislatures as well as a central legislature means a central legislature only;

“prescribed” means prescribed by any of the Schedules to this Act or by regulations under this Act;

“Registrar” means the Registrar of Companies; *(Inserted by Act 5 of 1991)*

“true and first inventor”, “true inventor” and “inventor” shall, to the extent that the context does not express, include the person who is the actual inventor of any invention or his or her assigns, or if the actual inventor be dead, his or her legal representatives, or (if the actual inventor, his or her legal representatives, or assigns, is or are not resident in the Territory) any person to whom such invention has been communicated by the actual inventor, his or her legal representatives, or assigns, but shall not include a person importing an invention from any other Territory or country without the authority of the actual inventor, his or her legal representatives or assigns.

Persons entitled to apply for patent

3. (1) Any person, whether a British subject or not, may make an application for a patent.

- (2) Two or more persons may make a joint application for a patent, and a patent may be granted to them jointly.

- (3) An applicant may be—
- (a) the actual inventor;
 - (b) his or her assigns;
 - (c) the actual inventor jointly with the assigns of a part interest in the invention;
 - (d) the legal representative of a deceased actual inventor or of his or her assigns; or any person to whom the invention has been communicated; or
 - (e) by the actual inventor, his or her legal representatives, or assigns (if the actual inventor, his or her legal representatives, or assigns is or are not resident in the Territory).

Applications and specification

4. (1) An application for a patent must be made in the form set forth in the Schedule, or in such other form as may from time to time be prescribed and must be left at the Registrar's office in the prescribed manner.

(2) An application must contain a declaration by the applicant, or, in the case of a joint application, by one of the applicants, to the effect that the applicant or one or more of the applicants is or are in possession of an invention, whereof the applicant or one or more of the applicants claims or claim to be the true and first inventor or inventors, and for which the applicant or applicants desires or desire to obtain a patent. The application must be accompanied by either a provisional or complete specification, and must state an address in the town of Road Town for the reception of notices and other communications with respect to the application or invention.

(3) A provisional specification must describe the nature of the invention, and be accompanied by drawings, if required.

(4) A complete specification, whether left on application or subsequently, must particularly describe and ascertain the nature of the invention, and in what manner it is to be performed, and must be accompanied by drawings, if required.

(5) The requirement as to drawings shall not be deemed to be insufficiently complied with by reason only that instead of being accompanied by drawings the complete specification refers to the drawings which accompanied the provisional specification.

(6) 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.

Registrar may refer application to examiner

5. The Registrar shall, if he or she thinks fit, refer any application to an examiner, who shall ascertain whether the nature of the invention has been fairly described and the application, specification, and drawings (if any) have been prepared in the prescribed manner, and the title sufficiently indicates the subject-matter of the invention, and shall report thereon to the Registrar.

Power for Registrar to refuse application or require amendment

6. (1) If the Registrar is of opinion, or if, after reference to an examiner, such examiner reports that the nature of the invention is not fairly described, or that the application, specification, or drawings has not or have not been prepared in the prescribed manner, or that the title does not sufficiently indicate the subject-matter of the invention, the Registrar may refuse to accept the application or require that the application, specification, or drawings be amended, before he or she proceeds with the application; and in the latter case the application shall, if the Registrar so directs, bear date as from the time when the requirement is complied with.

(2) Where the Registrar refuses to accept the application or requires an amendment, the applicant may appeal from his or her decision to a Judge in Chambers.

(3) The Judge shall, if required, hear the applicant and the Registrar, and may make an order determining whether, and subject to what conditions, (if any) the application shall be accepted.

(4) The Registrar shall, when an application has been accepted, give notice thereof to the applicant.

(5) If after an application has been made, but before the patent thereon has been sealed, another application for a patent is made, accompanied by a specification bearing the same or a similar title, the Registrar, if he or she thinks fit, on the request of the second applicant or of his or her legal representative may, within 2 months of the grant of a patent on the first application either decline to proceed with the second application or allow the surrender of the patent, if any, granted thereon.

Time for leaving complete specification

7. (1) If the applicant does not leave a complete specification with his or her application, he or she may leave it at any subsequent time within 9 months from the date of application, and the Registrar may, on payment of the prescribed fee, extend such time to 10 months.

(2) Unless a complete specification is left within 9 months of such extended time, the application shall be deemed to be abandoned.

Comparison of provisional and complete specification

8. (1) Where a complete specification is left after a provisional specification, the Registrar may, if he or she thinks fit, refer both specifications to an examiner for the purpose of ascertaining whether the complete specification has been prepared in the prescribed manner, and whether the invention particularly described in the complete specification is substantially the same as that which is described in the provisional specification.

(2) If the Registrar is of opinion, or if, after reference to an examiner, such examiner reports that the conditions hereinbefore contained have not been complied with, the Registrar may refuse to accept the complete specification unless and until the same shall have been amended to his or her satisfaction; but any such refusal shall be subject to appeal to a Judge in Chambers.

(3) The Judge 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.

(4) Unless a complete specification is accepted within 12 months from the date of application, or such extended time not exceeding 15 months from the date of application, as the Registrar on payment of the prescribed fee may allow, then (save in the case of an appeal having been lodged against the refusal to accept) the application shall, at the expiration of the said 12 months, or such extended time, become void.

(5) Reports of examiners shall not in any case be published or be open to public inspections, and shall not be liable to production or inspection in any legal proceedings, other than an appeal to a Judge in Chambers under this Act; unless the court or officer having power to order discovery in such legal proceeding shall certify that such production or inspection is desirable in the interest, and ought to be allowed.

Advertisement on acceptance of complete specification

9. On the acceptance of the complete specification, the Registrar shall advertise the acceptance in the *Gazette* and the application and specification or specifications with the drawings, (if any) shall be open to public inspection at the Registrar's office during office hours.

Opposition to grant of patent

10. (1) Any person may, at any time within 3 months from the date of the advertisement of the acceptance of a complete specification, give notice at the Registrar's office of opposition to the grant of the patent on the ground of an applicant having obtained the invention from him or her, or from a person of whom he or she is the legal representative, or on the ground that the invention has been patented in the Territory on application of prior date, or on the ground that the complete specification describes or claims an invention other than that described in the provisional specification, and that such other invention forms the subject of an application made by the opponent in the interval between the leaving of the provisional specification, and the leaving of the complete specification, but on no other ground.

(2) Where such notice is given, the Registrar may require the person giving such notice to give security to an amount not exceeding \$120 for the costs of the opposition; and if the security so required is not given within the said 3 months, the opposition shall lapse.

(3) Where such notice and such security, if required, is given, the Registrar shall give notice of the opposition to the applicant, and shall on the expiration of the said 3 months, after hearing the applicant and the person so giving notice, if desirous of being heard, decide on the case, but subject to appeal to a Judge in Chambers.

(4) The Judge shall, on such appeal, hear the applicant and any person so giving notice and being, in the opinion of the Judge, entitled to be heard in opposition to the grant, and shall determine whether the grant ought or ought not to be made.

(5) The Judge may, if he or she thinks fit, obtain the assistance of an expert, who shall be paid by the party giving notice of opposition such remuneration as the Judge shall determine which may be recovered as costs.

(6) The Judge or the Registrar, as the case may be, may after decision, make such order as may be thought fit for the payment of costs by the applicant to the party giving notice or *vice versa*, and such order may be made a rule of Court on an application *ex parte*.

Specifications etc. not to be published unless application accepted

11. Where an application for a patent has been abandoned or become void, the specification or specifications and drawings (if any) accompanying or left in connection with such application shall not at any time be open to public inspection or be published by the Registrar.

Sealing of patent

12. (1) If there be no opposition, or, in the case of opposition, if the determination is in favour of the grant of a patent, such patent shall be sealed with the public seal of the Territory.

(2) A patent shall be sealed as soon as may be, and not after the expiration of 15 months from the date of application, except in the cases hereinafter mentioned, that is to say—

- (a) where the sealing is delayed by an appeal to a Judge in Chambers, or by opposition to the grant of the patent, the patent may be sealed at such time as a Judge in Chambers may be direct;
- (b) if the person making the application dies before the expiration of the 15 months aforesaid, the patent may be granted to his or her legal representative and sealed at any time within 6 months after the death of the applicant;
- (c) where the Registrar has extended the time for leaving or the time for accepting the complete specification, or both such times, the total period of time so extended shall be added to the period of 15 months above provided.

Date of patent

13. (1) Every patent shall be in duplicate, and one duplicate shall be deposited in the Registrar's office, and every patent shall be dated and sealed as of the day of the application.

(2) No proceedings shall be taken in respect of an infringement committed before the publication of the complete specification.

(3) In case of more than one application for a patent for the same invention, the sealing of a patent on one of those applications shall not prevent the sealing of a patent on an earlier application.

Provisional protection

14. Where an application for a patent, in respect of an invention, has been accepted, the invention may, during the period between the date of the

application and the date of sealing such patent, be used and published without prejudice to the patent to be granted for the same; and such protection from the consequences of use and publication is in this Act referred to as provisional protection.

Effect of acceptance of complete specification

15. (1) 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.

(2) An applicant shall not be entitled to institute any proceeding for infringement, unless and until a patent for the invention has been granted to him or her.

Granting of letters patent by Governor

16. All letters patent for inventions under this Act shall be granted by the Governor in the name of Her Majesty, under the public seal of the Territory.

Powers to grant patents to jointly though some grantees are not investors

17. A patent may be granted to several applicants jointly, although some or one of them only are or is the true and first inventors or inventor.

Extent of patent

18. Every patent, when sealed, shall have effect throughout the Territory.

Term of patent

19. (1) The term limited in every patent for the duration thereof shall be 20 years from its date.

(2) Every patent shall, notwithstanding anything therein or in this Act, cease if the patentee fails to make the prescribed payments within the prescribed times.

(3) If, nevertheless in any case, by accident, mistake, or inadvertence, a patentee fails to make any prescribed payments within the prescribed time, he or she may apply to the Registrar for an enlargement of time for making the payment.

(4) Thereupon the Registrar shall, if satisfied that the failure has arisen from any of the above-mentioned causes, on receipt of the prescribed fee for enlargement, not exceeding \$48, enlarge the time accordingly, subject to the following conditions—

- (a) the time for making any payment shall not in any case be enlarged for more than 6 months;
- (b) if any proceeding shall be taken in respect of an infringement of the patent committed after a failure to make any payment within the prescribed time, and before the enlargement thereof the Court before which the proceeding is proposed to be taken may,

if it shall think fit, refuse to award or give any damages in respect of such infringement.

Amendment of specification

20. (1) An applicant or a patentee may, from time to time, by request in writing left at the Registrar's office, seek leave to amend his or her specification, including drawings forming part thereof, by way of disclaimer, correction, or explanation, stating the nature of such amendment and his or her reason for the same.

(2) The request and the nature of such proposed amendment shall be advertised in the *Gazette*, and at any time within one month from its first advertisement any person may give notice at the Registrar's office of opposition to the amendment.

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

(4) The Judge shall, if required, hear the person making the request and the person so giving notice, and being, in the opinion of the Judge, entitled to be heard in opposition to the request, and shall determine whether, and subject to what conditions, if any, the amendment ought to be allowed.

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

(6) When leave to amend is refused by the Registrar, the person making the request may appeal from his or her decision to a Judge in Chambers.

(7) The Judge shall, if required, hear the person making the request and the Registrar, and may make an order determining whether, and subject to what conditions, if any, the amendment ought to be allowed.

(8) 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.

(9) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in the case of fraud; and the amendment shall in all Courts and for all purposes be deemed to form part of the specification.

(10) The foregoing provisions of this section do not apply when and so long as any action for infringement or proceeding for revocation of a patent is pending.

Power to disclaim part of invention during action, etc.

21. In an action for infringement of a patent, and in a proceeding for revocation of a patent, the Court may order that the patentee shall, subject to such terms as to costs and otherwise as the Court may impose, be at liberty to apply at the Registrar's office for leave to amend his or her specification by way of disclaimer, and may direct that in the meantime the trial or hearing of the action shall be postponed.

Restriction on recovery of damages

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

Advertisement of amendment

23. Every amendment of a specification shall be advertised in the *Gazette*.

Power for Commission to order grant of licences

24. If on the petition of any person interested it be proved to the Commission that, by reason of the default of a patentee to grant licences on reasonable terms—

- (a) the patent is not being worked in the Territory; or
- (b) the reasonable requirements of the public with respect to the invention cannot be supplied; or
- (c) any person is prevented from working or using to the best advantage an invention of which he is possessed,

the Commission may order the patentee to grant licences on such terms as to the amount of royalties, security for payment, or otherwise, as the Commission, having regard to the nature of the invention and the circumstances of the case, may deem just, and any such order may on application to the Court be enforced by *mandamus*.

(Amended by Act 12 of 2001)

Register of patents

25. (1) There shall be kept at the Registrar's office a book called the Register of patents wherein shall be entered the names and addresses of grantees of patents, notification 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 from time to time be prescribed.

(2) The Register of patents shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

(3) 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 his or her office.

Fees

26. Such fees as may be prescribed shall be levied and paid to the credit of the Government Trust Account established under section 19 of the Financial Services Commission Act. *(Amended by Act 12 of 2001)*

Extension of term of patent on petition to Commission

27. (1) A patentee may, after advertising in manner directed by any rules made under this section his or her intention to do so, present a petition to the Commission, praying that his or her patent may be extended for a further term, but such petition must be presented at least 6 months before the time limited for the expiration of the patent. (*Amended by Act 12 of 2001*)

(2) Any person may enter a caveat, addressed to the Managing Director of the Commission, against the petition. (*Substituted by Act 12 of 2001*)

(3) If the Commission shall be pleased to refer any such petition to the High Court, the Court shall proceed to consider the same, and the petitioner and any person who has entered a caveat shall be entitled to be heard by himself or herself or by counsel on the petition. (*Amended by Act 12 of 2001*)

(4) The Court shall, in considering its decision, 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 the Court reports that the patentee has been inadequately remunerated by his or her patent, it shall be lawful for the Commission to extend the term of the patent for a further term not exceeding 7, or, in exceptional cases, 14 years; or to order the grant of a new patent for the term therein mentioned, and containing any restrictions, conditions, and provisions that the Court may think fit. (*Amended by Act 12 of 2001*)

(6) It shall be lawful for the Cabinet, after consultation with the Commission, to make rules of procedure and practice for regulating proceedings on such petitions, and subject thereto such proceedings shall be regulated according to the existing procedure and practice relating to pleadings in the Court. (*Amended by Act 12 of 2001*)

(7) The costs of all parties of and incident to such proceedings shall be in the discretion of the Court; and the orders of the Court respecting costs shall be enforceable in like manner as other orders of the Court.

Revocation of patent

28. (1) No proceeding by *scire facias* to repeal a patent shall be taken.

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

(3) Every ground on which a patent might, at the commencement of this Act, be repealed by *scire facias* shall be available by way of defence to an action for infringement, and shall also be a ground of revocation.

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

(a) the Commission; (*Substituted by Act 12 of 2001*)

(b) any person authorised by the Commission; (*Substituted by Act 12 of 2001*)

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

- (d) any person alleging that he or she, or any person under or through whom he or she claims, was the true inventor of any invention included in the claim of the patentee;
- (e) any person alleging that he or she, or any person under or through whom he or she claims an interest in any trade, business, or manufacture, had publicly manufactured, used or sold, within the Territory, before the date of the patent, anything claimed by the patentee as his or her invention.

(5) The plaintiff must deliver with his or her petition particulars of the objections on which he or she means to rely; and no evidence shall, except by leave of the Court, be admitted in proof of any objection of which particulars are not so delivered.

(6) Particulars delivered may be from time to time amended by leave of the Court.

(7) The defendant shall be entitled to begin, and give evidence in support of the patent; and if the plaintiff gives evidence impeaching the validity of the patent, the defendant shall be entitled to reply.

(8) Where a patent has been revoked on the ground of fraud, the Registrar may, on the application of the true inventor made in accordance with provisions of this Act, grant to him or her a patent *in lieu* of and bearing the same date as the date of revocation of the patent so revoked, but the patent so granted shall cease on the expiration of the term for which the revoked patent was granted.

Patent to bind Crown

29. A patent shall have to all intents the like effect as against Her Majesty the Queen Her heirs and successors, as it has against a subject, excepting always that the Governor may at any time after the application use the invention for the services of the Crown on terms to be before or after the use thereof agreed on, between the Governor and the patentee, or, in default of such agreement, on such terms as may be settled by the Court after hearing all parties interested.

Hearing with assessors

30. (1) In an action or proceeding for infringement or revocation of a patent, the Commission may, if it thinks fit, or on the request of either of the parties to the proceedings, call in the aid of an assessor specially qualified, and try and hear the case wholly or partially with his or her assistance. (*Amended by Act 12 of 2001*)

(2) The remuneration, if any, to be paid to an assessor under this section shall be determined by the Court and be paid in the same manner as the other expenses of the execution of this Act.

Delivery of particulars

31. (1) In an action for infringement of a patent, the plaintiff must deliver with his or her statement of claim, or, by order of the Court at any subsequent time, particulars of the breaches complained of.

(2) The defendant must deliver with his or her statement of defence, or by order of the Court at any subsequent time, particulars of any objections on which he or she relies in support thereof.

(3) If the defendant disputes the validity of the patent, the particulars delivered by him or her must state on what grounds he or she disputes it, and if one of those grounds is want of novelty must state the time and place of the previous publication or user alleged by him or her.

(4) At the hearing no evidence shall, except by leave of the Court, be admitted in proof of any alleged infringement or objection of which particulars are not so delivered.

(5) Particulars delivered may be from time to time amended, by leave of the Court.

(6) On taxation of costs regard shall be had to the particulars delivered by the plaintiff and by the defendant; and they respectively shall not be allowed any costs in respect of any particular delivered by them, unless the same is certified by the Court to have been proved or to have been reasonable and proper, without regard to the general costs of the case.

Order for inspection, etc. in action

32. In an action for infringement of a patent, the Court may, on the application of either party, make such order for an injunction, inspection, or account, 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

33. In an action for infringement of a patent, the Court may certify that the validity of the patent came in question; and if the Court so certify, then, in any subsequent action for infringement, the plaintiff in that action, on obtaining a final order or judgment in his or her favour, shall have his or her full costs, charges, and expenses as between solicitor and client, unless the Court trying the action certifies that he or she ought not to have the same.

Remedy in case of groundless threats of legal proceedings

34. (1) Where any person claiming to be the patentee of an invention, by circulars, advertisements, or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged manufacture, use, sale, or purchase of the invention, any person or persons aggrieved thereby may bring an action against him or her, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as may have been sustained thereby, if the alleged manufacture, use, sale, or purchase to which the threats related was not in fact an infringement of any legal rights of the person making such threats.

(2) This section shall not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his or her patent.

Licensed patent agents

35. It shall be lawful for the Registrar, with the sanction of the Commission, to license fit and proper persons to be patent agents for transacting business under the provisions of this Act, and, upon proof to the Registrar's satisfaction of the malfeasance or incapacity of any such licensed patent agent, or on non-payment of any annual fee for any such licence, and with such sanction as aforesaid, to revoke any such licence. *(Amended by Act 12 of 2001)*

Patent for one invention only

36. Every patent may be in the form in the Schedule, and shall be granted for one invention only, but may contain more than one claim; but 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 comprises more than one invention.

Patent on application of representative of deceased inventor

37. (1) If a person possessed of an invention for which he or she is entitled to obtain a patent dies without making application for a patent for the invention, application may be made by, and a patent for the invention granted to, the legal representative of the inventor.

(2) Every such application must be made within 6 months of the decease of such person, and must contain a declaration by the legal representative that he or she believes such person to be the true and first inventor of the invention.

Patent to first inventor not invalidated by application in fraud of him or her

38. A patent granted to the true and first inventor shall not be invalidated by an application in fraud of him or her, 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.

Assignment of patent for particular place

39. A patentee may assign his or her patent for the whole of the Territory or any part thereof.

Loss or destruction of patent

40. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the Registrar, the Registrar may at any time cause a triplicate thereof to be sealed and delivered to the person entitled thereto.

Witnesses may be summoned

41. For the purpose of any application or opposition or other matters requiring the decision of a Judge or the Registrar, the Registrar may, and at the request of any party to be heard shall, cause summonses under the seal of the Court to be issued for the attendance of witnesses and may examine witnesses on oath and administer oaths for that purpose under this part of the Act, and every witness so summoned shall be bound to attend at the time and place mentioned in such summons and shall be paid his or her expenses according to the scale for the

time being allowed to witnesses on trials in the Court, and shall continue in attendance until the matter shall have been disposed of, and produce any document in his or her power, possession, custody, or control which he or she shall by such summons be required to produce.

Proceedings and costs before Judge

42. A Judge may make rules regulating references and appeals to the Judge, and the practice and procedure before him or her under this Act; and in any proceeding before the Judge under this Act, he or she may order costs to be paid by either party, and any such order may be made a rule of the Court.

Exhibition at industrial or international exhibition not to prejudice patent rights

43. The exhibition of an invention at an industrial or international exhibition, whether within or without Her Majesty's Dominions certified as such under the hand of the Registrar, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition in the place where the exhibition is held, or the use of the invention during the period of the holding of the exhibition by any person elsewhere, without the privity or consent of the inventor, shall not prejudice the right of the inventor or his or her legal personal representative to apply for and obtain provisional protection and a patent in respect of the invention or the validity of any patent granted on the application, provided that both the following conditions are complied with, namely—

- (a) the exhibitor must, before exhibiting the invention, give the Registrar the prescribed notice of his or her intention to do so; and
- (b) the application for a patent must be made before or within 6 months from date of the opening of the exhibition.

Power to require models on payment

44. Where the invention is one which admits of being represented by a model, the Registrar may require the patentee at his or her own expense to furnish the Registrar with a model of the invention.

Assignment to Governor of certain inventions

45. (1) The inventor of any improvement in instruments or munitions of war, his or her executors, administrators, or assigns (who are in this section comprised in the expression the inventor) 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 same: and the Governor may be a party to the assignment.

(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 for the time being.

(3) Where any such assignment has been made to the Governor he or she may at any time before the application for a patent for the invention, or before publication of the specification or specifications, certify to the Registrar his or her opinion 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 certifies, the application and specification or specifications, with the drawings (if any), and any amendment of the specification or specifications and any copies of such documents and drawings, shall, instead of being left in the ordinary manner at the Registrar's office, be delivered to the Registrar in a packet sealed by authority of the Governor.

(5) Such packet shall, until the expiration of the term or extended 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) Such sealed packet shall be delivered at any time during the continuance of the patent to any person authorised by writing under the hand of the Governor to receive the same, and shall, if returned to the Registrar, be again kept sealed by him or her.

(7) On the expiration of the term or extended term of the patent, such sealed packet shall be delivered to any person authorised by writing under the hand of the Governor to receive it.

(8) Where the Governor certifies as aforesaid, after an application for a patent has been left at the Registrar's office, but before the publication of the specification or specifications, the application, specification, or specifications with the drawings (if any), shall be forthwith placed in a packet sealed by authority of the Registrar, and such 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 the Governor has certified 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 in this section otherwise directed, the provisions of this Act shall apply in respect of any such invention and patent as aforesaid.

(11) The Governor may, at any time by writing under his or her hand, 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 him or her, to investigate the same or the merits thereof, shall not, nor shall anything done for the purpose 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.

International arrangements for protection of inventions

46. (1) If Her Majesty is pleased, by Order in Council, to apply the provisions of section 103 of the Imperial Act, entitled “The Patents, Designs, and Trade Marks Act, 1883,” to the Territory, then any person who has applied for protection for any invention in England, or in any foreign state with the Government of which Her Majesty has made an arrangement under the said section, for mutual protection of inventions, shall be entitled to a patent for his or her invention under this Act, in priority to other applicants; and such patent shall take effect from the same date as the date of the application in England or such foreign state (as the case may be).

(2) Such application shall be made within 12 months from such person applying for protection in England or the foreign state with which the arrangement is in force.

(3) Nothing in this section contained shall entitle the patentee to recover damages for infringements happening prior to the date of the actual acceptance of his or her complete specification in the Territory.

(4) The publication in the Territory during the respective periods aforesaid of any description of the invention, or the use therein during such periods of the invention, shall not invalidate the patent granted for the invention.

(5) The application for the grant of a patent under this section shall be made in the same manner as an ordinary application under this Act.

(6) An application under this section shall be accompanied by a complete specification which, if it be not accepted within the period of 12 months, shall, with the drawings (if any) be open to public inspection at the expiration of that period.

(7) The provisions of this section shall, in the case of foreign states with respect to which Her Majesty from time to time, by Order in Council, declares the provisions of the aforesaid section 103 of the said first recited Imperial Act to be applicable, and so long only in the case of each state as such Order continues in force with respect to that state.

Provisions for intercolonial, etc., arrangements

47. (1) Whenever it appears to the Cabinet that the legislature of any British Possession has made satisfactory provision for the protection in such possession of inventions patented in the Territory, the Cabinet may, by order, apply all or any of the provisions of the last preceding section relating to the protection of inventions patented in England, with such variations or additions (if any) as to the Cabinet seem fit, to inventions patented in such British Possession.

(2) An order under this section shall, from a date to be mentioned for the purpose in the order, take effect as if its provisions had been contained in this Act; but the Cabinet may revoke any such order.

(Amended by Act 12 of 2001)

Cabinet may make regulations

48. The Cabinet may after consultation with the Commission make regulations for carrying into effect the provisions of this Act, and for regulating the amount, collection, and disposal of fees:

Provided that all such regulations regulating the amount, collection and disposal of the fees, shall be subject to disallowance by Her Majesty. (*Amended by Act 12 of 2001*)

Saving for prerogative

49. Nothing in this Act shall take away, abridge or prejudicially affect the prerogative of the Crown in relation to the granting of any Letters Patent or to the withholding of a grant thereof.

FORM B

GOVERNMENT OF THE BRITISH VIRGIN ISLANDS
PATENTS ACT**FORM OF PROVISIONAL SPECIFICATION**

(a) Here insert title as in
declaration.

(a)

(b) Here insert name,
address, and calling
of inventor as in
declaration.

I, (b) _____, of _____,
in _____, do hereby declare that the nature of my invention for
to be as follows (c)

(c) Here insert short
description of
invention.

(d)

Dated this _____ day of _____ 20 _____.

(d) Signature of inventor.

FORM C

GOVERNMENT OF THE BRITISH VIRGIN ISLANDS
PATENTS ACT

FORM OF COMPLETE SPECIFICATION

(a) Here insert title as
in declaration.

(a)

I, (b)

of

(b) Here inset name,
address, and
calling of inventor
as in declaration.

of do hereby declare the nature of my
invention for and in what manner the same is to
be performed, to be particularly described and ascertained in and by the
following statement (c)—

(c) Here insert full
description of
invention.

Having now particularly described and ascertained the nature of my
said invention and in what manner the same is to be performed, I
declare that what I claim is (d),

1

2.

3. etc.

(d) Here state
distinctly the
features of novelty
claimed.

(e)

(e) Signature of
inventor

Dated this day of 20 .

FORM D

GOVERNMENT OF THE BRITISH VIRGIN ISLANDS
PATENTS ACT

FORM OF PATENT

(L.S.)

By His or Her Excellency (here insert the name of the Governor) Governor of the Territory of the Virgin Islands.

To all to whom these presents shall come, Greeting

WHEREAS of in , hath by

his or her solemn declaration represented unto me that he or she is in possession of an invention for , that he or she is the true and first inventor thereof, and that the same is not in use by any other person to the *best* of his or her knowledge and belief:

And Whereas the said inventor hath humbly prayed that I would be pleased to grant unto him or her (hereinafter together with his or her executors, administrators, and assigns, or any of them, referred to as the said patentee) Letters Patent in the name of Her Majesty for the sole use and advantage, of his or her said invention within the Territory:

And Whereas the said inventor hath by and in his or her complete specification particularly described the nature of his or her invention:

Know Ye, therefore, that I, in the name and on behalf of Her Majesty, do by these Presents, give and grant unto the said patentee my special license, full power, sole privilege, and authority, that he or she the said patentee by himself, herself, his or her agent, or licensees, and no others may at all times hereafter, during the term of years herein mentioned, make, use, exercise, and vend the said invention within

in such manner as to him or her or them may seem meet, and that the said patentee shall have and enjoy the whole profit and advantage from time to time accruing by reason of the said invention, during the term of fourteen years from the date hereunder written of these presents: and to the end that the said patentee may have and enjoy the sole use and exercise and the full benefit of the said invention, I do by these Presents require and strictly command all and every person and persons, bodies politic and corporate, and all others of what estate, quality, degree, name, or condition soever they be within this Territory, that they do not at any time during the continuance of the said term of fourteen years, either directly or indirectly, make use of or put in practice the said invention, or any part of the same, nor in anywise imitate the same, nor make or cause to be made any addition thereto or subtraction therefrom, whereby to pretend themselves the inventors thereof, without the consent, license, or agreement of the said patentee in writing under his or her hand and seal, on pain of incurring such penalties as may be justly inflicted on such offenders for their contempt and of being answerable to the said patentee according to law for his or her damages thereby occasioned: Provided always and these Letters Patent are on this condition, that, if any time during the said term it be made to appear to the High Court that this grant is contrary to law, or prejudicial or inconvenient to Her Majesty's subjects in general, or that the said invention is not a new invention as to the public use and exercise thereof or that the said patentee is not the first and true inventor thereof within this Territory as aforesaid, these Letters Patent shall forthwith determine, and be void to all intents and purposes, notwithstanding anything hereinbefore contained: Provided also, that if the said patentee shall not pay all fees by law required to be paid in respect of the grant of these Letters Patent, or in respect of any matter relating thereto at the time or times, and in manner for the time being by law provided; and also if the said patentee shall not supply or cause to be supplied, for Her Majesty's service in

this Territory, all such articles of the said invention as may be required by the Officers administering any department of Her Majesty's service in this Territory in such manner, at such times, and at and upon such reasonable prices and terms as shall be settled for that purpose by the Governor of this Territory, then, and in any of the said cases, these Letters Patent, and all privileges and advantages, whatever hereby granted shall determine and become void, notwithstanding anything hereinbefore contained: Provided also, that nothing herein contained shall prevent the granting of licences in such manner and for such considerations as they may by law be granted; and lastly, I do by these Presents in the name and on behalf of Her Majesty grant unto the said patentee that these Letters Patent shall be construed in the most beneficial sense for the advantage of the said patentee. In witness whereof I have caused these Letters to be made Patent this day of 20 to be sealed and dated as of the said day of 20 in the year of Her Majesty's Reign.
