

CHAPTER 90:03

PATENTS AND DESIGNS ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Interpretation.

PART I
PATENTS
TITLE I

Application for and Grant of Patent

3. Application.
4. Specifications.
5. Proceedings upon application.
6. Provisional protection.
7. Time for leaving complete specification.
8. Comparison of provisional and complete specification.
9. Investigation of previous specifications in Guyana on applications for patents.
10. Investigation of specifications published subsequently to application.
11. Time within which application must be in order and for acceptance of complete specification.
12. Advertisement on acceptance of complete specification.
13. Effect of acceptance of complete specification.
14. Opposition to grant of patent.
15. Mention of inventor as such in patent.
16. Grant and sealing of patent.
17. Date of patent.
18. Effect, extent and form of patent.
19. Fraudulent applications for patents.
20. Single patent for cognate inventions.

LAWS OF GUYANA

4

Cap. 90:03

Patents and Designs

TERM OF PATENT

SECTION

21. Term of patent.
22. Extension of term of patent.
23. Patents of addition.

RESTORATION OF LAPSED PATENTS

24. Restoration of lapsed patents.

AMENDMENT OF SPECIFICATION

25. Amendment of specification by Registrar.
26. Amendment of specification by the Court.
27. Restrictions on recovery of damages.

COMPULSORY LICENCES AND REVOCATION

28. Provision as to patents endorsed "licences of right".
29. (1) Revocation of patent.
(2) Grounds for revocation of patent.
30. Power of Registrar to revoke patents.
31. (1) Provisions for prevention of abuse of monopoly rights.
(2) (f) Provisions as to unfair exercise of process patent.

REGISTER OF PATENTS

32. Register of patents.

STATE

33. Right of State to use patented inventions.
34. Assignment to Minister of certain inventions.

LEGAL PROCEEDINGS

35. (1) Hearing with assessor.
(2) Court of Appeal.

SECTION

36. Power to counter-claim for revocation in an action for infringement.
37. Power of Court in infringement action as regards relief in respect of particular claims.
38. Exemption of innocent infringer from liability for damages.
39. Order for inspection, etc., in action.
40. Certificate of validity questioned and costs thereon.
41. Remedy in case of groundless threats of legal proceedings.

MISCELLANEOUS

42. (1) Grant of patents to two or more persons.
(2) Power to give direction as to development of patents jointly owned.
43. Avoidance of certain conditions attached to the sale, etc., of patented articles.
44. (1) Chemical products and substances intended for food or medicine.
(3) Appeal to Court.
45. Provisions as to anticipation.
46. Disconformity.
47. Patent on application of representative of deceased inventor.
48. Loss or destruction of patent.
49. Requests for information as to patent or patent application.
50. Provisions as to exhibitions.
51. Publication of journal, indexes, etc.
52. Models for Chief Education Officer..
53. Special provisions as to vessels, aircraft and land vehicles.

TITLE II

Registration of United Kingdom Patents

54. Registration of Patents issued in the United Kingdom.
55. Application for registration.
56. Registration on requirements being complied with.
57. Effect of registration.
58. Duration of privileges on registration.

LAWS OF GUYANA

6

Cap. 90:03

Patents and Designs

SECTION

59. Right of persons affected to apply to the Court for declaration as to privileges acquired by registration.
60. Amendment of specifications, etc., of the United Kingdom Patent.
61. Registration of assignments, etc.

PART II DESIGNS

TITLE I

Registrations of Designs

62. Application for registration of designs.
63. Registration of designs in new classes.
64. Certificate of registration.
65. Register of designs.

COPYRIGHT IN REGISTERED DESIGNS

66. Copyright on registration.
67. Requirements before delivery on sale.
68. Effect of disclosure on copyright.
69. Inspection of registered designs.
70. Information as to existence of copyright.
71. Cancellation of registration of designs.
72. Registration of designs to bind the State.

INDUSTRIAL AND INTERNATIONAL EXHIBITIONS

73. Provisions as to exhibitions.

LEGAL PROCEEDINGS

74. Piracy of registered design.
75. Application of certain provisions of the Act as to patents to aa designs.

TITLE II

United Kingdom Designs

SECTION

76. Privileges conferred on registered proprietor of a design registered in the United Kingdom extended to Guyana.
77. Protection of an innocent infringer of copyright in a design registered in the United Kingdom from suit for damages.
78. Court may declare privileges not acquired.

PART III
GENERAL

Patent Office and Proceedings thereat

79. Patent Office.
80. Examiner.
81. Seal of Patent Office.
82. Fees.

PROVISIONS AS TO REGISTERS AND OTHER
DOCUMENTS IN PATENT OFFICE

83. Trust not to be entered in registers.
84. Inspection of and extracts from registers.
85. Privilege of reports of examiners.
86. Prohibition of publication of specification, drawings, etc., where application abandoned, etc.
87. Power for Registrar to correct clerical errors.
88. Registration of assignments, etc.
89. Rectification of registers by Court.

POWERS AND DUTIES OF REGISTRAR

90. Exercise of discretionary power by Registrar.
91. Costs and security for costs.
92. Frivolous applications and applications for patents for illegal inventions.
93. Provisions as to failure to comply with certain time limits.

LAWS OF GUYANA

8

Cap. 90:03

Patents and Designs

EVIDENCE, ETC.

SECTION

94. Evidence before Registrar.
95. Certificate of Registrar to be evidence.
96. Evidence of documents in Patent Office.
97. Applications and notices by post.
98. Excluded days.
99. Declaration by infant, etc.
100. Enforcement of order for grant of licence.

REGISTER AND LICENSING OF PATENT AGENTS

101. Licensed patent agents.
102. Unlicensed patent agent.

POWERS, ETC., OF MINISTER

103. Power of Minister to make regulations.
104. Proceedings of the Permanent Secretary.

OFFENCES

105. Offences.
106. Unauthorised assumption of the National Coat of Arms of Guyana.
107. Provisions as to “the Court”.
108. Tribunal for appeals from the Registrar.

CONSTRUCTION AND SAVINGS

109. Construction.
 110. Saving for prerogative.
-

CHAPTER 90: 03

PATENTS AND DESIGNS ACT

1953 Ed.
c. 342

An Act to amend and consolidate the law as to the registration of Patents and Designs.

9 of 1937

[1ST JANUARY, 1938]

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

Short title.

2. In this Act—

Interpretation.
[10 of 1938
29 of 1961]

“Appeal Tribunal” means a tribunal constituted in accordance with section 108;

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

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

“Court” means the High Court;

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

“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 Registrar for the purposes of this Act to whom the Registrar refers questions concerning patents;

LAWS OF GUYANA

10

Cap. 90:03

Patents and Designs

c. 6:01 “invention” means any manner of new manufacture the subject of letters patent and grant of privilege within paragraph 5 of the Schedule to the Civil Law of Guyana Act and includes an alleged invention;

“inventor” and “applicant” shall, subject to this Act, 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 section 23;

“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;

c. 6:01

c. 2:02

“the Statute of Monopolies” means the provisions of the applied Act so entitled, declared under the former section 23 of the Civil Law of

Guyana Act to be part of the law of Guyana, and continued in force by section 16 (3) of the Law Revision Act;

“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, on a scale which is adequate and reasonable under all the circumstances.

PART I
PATENTS
TITLE I

Application for and Grant of Patent

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 Commonwealth citizen or not, and whether alone or jointly with any other person.

Application.

(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.

Specifications.

(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.

Proceedings
upon
application.
[30 of 1949]

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

(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, 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.

(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.

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

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 Act referred to as provisional protection.

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 Act, 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.

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).

Time for leaving complete specification. [30 of 1949]

(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), the application shall be deemed to be abandoned at the expiration of thirteen months from the date thereof.

Comparison of provisional and complete specification.

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.

(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.

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 Act, 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 Guyana and dated within fifty years next before such date.

Investigation of previous specifications in Guyana on applications for patents.

(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 Guyana, before the date which the patent applied for would bear if granted, in any document (other than a Guyana specification or a specification describing the invention for the purposes of an application for protection made in any country outside Guyana 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 Guyana), the provisions of subsections (2), (3) and (4) 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.

Investigation of specifications published subsequently to application.

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 Guyana for a patent which if granted would bear prior date to the date which the patent applied for would bear if granted.

(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.

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

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 Act, whether in connection with the complete specification or otherwise in relation to the application, and not before.

Time within which application must be in order and for acceptance of complete specifications. [30 of 1949]

(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.

(3) Subject to subsection (4), 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.

(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.

(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 Act, 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]

(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 Guyana 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 Guyana

specification or a specification describing the invention for the purpose of an application for protection made in any country outside Guyana 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 Guyana) published in Guyana before such date; or

(c) that the invention has been claimed in any complete specification for a Guyana 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 Guyana 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 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 this section, be entitled to be mentioned as such inventor as provided by subsection (8), and for the purposes of this section—

Mention of inventor as such in patent. [30 of 1949]

(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 Act 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).

(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)) desires to be mentioned as aforesaid he may make a claim in the prescribed manner in that behalf.

(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 section 14(1)(a) 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.

(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.

(6) Where a claim is made under subsection (3), 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.

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

(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.

(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.

(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.

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

(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.

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:

Grant and
sealing of
patent.
[30 of 1949]

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:

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 section 11(4) 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 subsection (2), or by opposition to the grant of the patent, or by a request or claim under section 15, 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.

(5) The period allowed by or under subsection (4) 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.

(6) Where in any case the longest period for sealing the patent allowable in that case by or under subsections (4) and (5) 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 Guyana 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.

(7) Paragraph (b) of the proviso to subsection (4) 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.

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

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

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 Guyana, and shall have effect throughout Guyana: Effect, extent and form of patent.

Provided that a patentee may assign his patent for any place in or part of Guyana, 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.

LAWS OF GUYANA

26

Cap. 90:03

Patents and Designs

Fraudulent applications for patents.

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.

(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 section 14(1) (a), or revoked on the same ground under section 30, the Registrar may, on the application of the true inventor made in accordance with this Act, 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 Act 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 this Act, 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 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 Act, 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

21. (1) The term limited in every patent for the duration thereof shall, save as otherwise expressly provided by this Act, 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.

Term of
patent.
[30 of 1949
4 of 1972]

(2) Any patent the original term of which had not expired at the date of the commencement of this Act 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 Act, the patent shall, during the period of extension, be subject to all the provisions of section 28 (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 Act, is subjected to loss or liability by reason of the extension of the term of any patent under 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 Act, 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.

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 one hundred 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.

Extension of
term of patent.
[30 of 1949
4 of 1972]

22. (1) A patentee may, after advertising in manner provided by rules of the High 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:

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 Guyana 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 the Commonwealth.

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

(a) the power conferred on the Court by the proviso to subsection (1) 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 Guyana 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);

(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) 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)—

(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) 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.

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.

Patents of addition.

(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

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.

(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 Act 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 has 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
specification
by
Registration.

(2) The request and 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 of proceeding before the Court for the revocation of a patent is pending.

Amendment of specification 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.

Restrictions on recovery of damages.

27. Where an amendment of a specification 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 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.

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) 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 Guyana 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 Guyana;

(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 Guyana;

(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 Guyana 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 the case.

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

Revocation of
patent.
[30 of 1949]

Grounds for
revocation of
patent.

c. 6:01

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

(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 paragraph 5 of the Schedule to the Civil Law of Guyana Act;
- (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 Guyana 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 section 33 (3), 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;

(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 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 section 19 (1), section 34 (12), section 45 and section 50.

(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 Guyana, 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
prevention of
abuse of
monopoly
rights.
[30 of 1949]

(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 Guyana, is not being worked within Guyana 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 Guyana 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 Guyana 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 Guyana 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 Guyana or the trade of any person or class of persons trading in Guyana, or the establishment of any new trade or industry in Guyana, is prejudiced, and it is in the public interest that a licence or licences should be granted;

(e) if any trade or industry in Guyana, 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 Act, 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 Guyana 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 Guyana without undue delay.

(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 Act 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 Guyana 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 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 Guyana, 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 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 Guyana 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 Guyana, 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.

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

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

(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 subsisting between Guyana and any Commonwealth territory or any foreign country.

(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.

(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.

(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.

(14) Subsection (7) 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 Act shall be incorporated with and form part of the register of patents under this Act.

(3) The register of patents shall be *prima facie* evidence of any matters by this Act 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.

STATE

Right of State to use patented inventions.
[30 of 1949]

33. (1) A patent shall have to all intents the like effect as against the State as it has against a citizen:

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 State on such terms as may, either before or after the use thereof, be agreed on, with the approval of the Minister responsible for such department, 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 State:

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 State 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) to make, use or exercise an invention for the services of the State 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 the Government 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 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.

(3) For the purposes of subsection (2) the expression "war period" means any period beginning with such date as may be declared by order of the Minister responsible for defence 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).

(4) In case of any dispute as to the making use, exercise or vending of an invention under this section, or the terms therefor, 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 State or from any Government department in respect of such patent.

(5) The right to use an invention for the services of the State under 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 State.

(6) A purchaser of any article sold in pursuance of subsection (2) or subsection (5), and any person claiming 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 the State.

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

Assignment to
Minister of
certain
inventions.

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

(2) The assignment shall effectually vest the benefit of the invention and patent in the Minister on behalf of the State 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 Minister.

(3) Where any such assignment has been made, the Minister 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 Minister 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 Minister.

(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 Minister.

(6) The sealed packet shall be delivered at any time during the continuance of the patent to any person authorised by the Minister 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 Minister.

(8) Where the Minister 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 Minister.

(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 Minister 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, this Act shall apply in respect of any such invention and patent as aforesaid.

(11) The Minister 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 Minister or to any person or persons authorised by the Minister 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 Act 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 Act in their application to such patents as aforesaid so far as may appear necessary for the purpose aforesaid.

(14) In this section "Minister" means the Minister responsible for defence.

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 Act.
- 36.** A defendant in an action for infringement of a patent, may, without presenting a petition, apply in accordance with the rules of the High 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 Act— 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 Act, 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 Act, 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 Act 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.

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.

Certificate of validity questioned and costs thereon.

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 be invalid or an infringement of rights arising from the acceptance of a complete specification in respect of a claim therein which is not shown by the plaintiff to be capable of being successfully opposed.

Remedy in case of groundless threats of legal proceedings.

(2) The defendant in any such action as aforesaid may apply, by way of a counter-claim in the action, for any relief to which he would be entitled in a separate action in respect of any infringement by the plaintiff of the patent to which the threats relate.

MISCELLANEOUS

42. (1) Where, after the commencement of this Act, a patent is granted to two or more persons jointly, they shall, unless otherwise specified in the patent, be treated for the purpose of the devolution of the legal interests therein as joint tenants, but, subject to any contract to the contrary, each of such persons shall be entitled to use the invention for his own profit without accounting to the others, but shall not be entitled to grant a licence otherwise than with their consent or in

Grant of patents to two or more persons.

LAWS OF GUYANA

accordance with directions given under this section, and, if any such person dies, his beneficial interest in the patent shall devolve on his personal representatives as part of his personal estate.

Power to give direction as to development of patents jointly owned.

(2) The Registrar may, upon application for relief under this subsection being made to him in the prescribed manner by any one or more of joint patentees, and after giving to the other joint patentees an opportunity of being heard, give such directions in accordance with the application as to the sale or lease of the patent for the invention, or as to the grant of licences in respect thereof, or otherwise as to the use and development of the rights thereunder as appear to him to be just and expedient, and it shall be the duty of all the joint patentees to give effect to any directions so given.

(3) If any person who is under obligation to give effect to any such directions as aforesaid fails to execute any instrument or to do any act or thing requisite for giving effect thereto within fourteen days after being requested in writing so to do by any of the joint patentees, the Registrar may, by direction given under the last preceding subsection, empower any person to execute that instrument or to do that act or thing in the name and on behalf of the person in default.

(4) Nothing in this section shall be taken to authorise the use of an invention or the giving of any directions in such manner as to prejudice or affect the mutual rights or obligations of trustees or the personal representatives of a deceased person, or any rights or obligations arising out of those relationships.

(5) An order of the Registrar giving any directions or refusing an application made under this section shall be subject to appeal to the Court.

Avoidance of certain conditions attached to the sale, etc., of patented articles.

43. (1) It shall not be lawful in any contract made after the commencement of this Act in relation to the sale or lease of, or licence to use or work, any article or process protected by a patent to insert a condition the effect of which will be—

(a) to prohibit or restrict the purchaser, lessee, or licensee from using any article or class of articles, whether patented

or not, or any patented process, supplied or owned by any person other than the seller, lessor, or licensor or his nominees; or

(b) to require the purchaser, lessee, or licensee to acquire from the seller, lessor, licensor, or his nominees, any article or class of articles not protected by the patent;

and any such condition shall be null and void, as being in restraint of trade and contrary to public policy:

Provided that this subsection shall not apply if—

(i) the seller, lessor, or licensor proves that at the time the contract was entered into the purchaser, lessee, or licensee had the option of purchasing the article or obtaining a lease or licence on reasonable terms, without such conditions as aforesaid; and

(ii) the contract entitles the purchaser, lessee, or licensee to relieve himself of his liability to observe any such condition on giving the other party three months notice in writing and on payment in compensation for such relief in the case of a purchase of such sum or in the case of a lease or licence of such rent or royalty for the residue of the term of the contract, as may be fixed by an arbitrator appointed by the Minister.

In any action, application, or proceedings under this Act no person shall be estopped from applying for or obtaining relief by reason of any admission made by him as to the reasonableness of the terms offered to him under paragraph (i) of the proviso to subsection (1).

(2) Any contract relating to the lease of or licence to use or work any patented article or patented process, whether made before or after the commencement of this Act, may at any time after the patent or all the patents by which the article or process was protected at the time of the making of the contract has or have ceased to be in force, and notwithstanding anything in the same or in any other contract to the contrary, be determined by either party on giving three months' notice in writing to the other party; but where any such notice is given

determining any contract made before the passing of this Act, the party giving the notice shall be liable to pay such compensation as, failing agreement, may be awarded by an arbitrator appointed by the Minister.

(3) Any contract made before the commencement of this Act relating to the lease of or licence to use or work any patented article or process and containing any condition which, had the contract been made after the passing of this Act, would by virtue of this section have been null and void may, at any time before the contract is determinable under the last preceding subsection, and notwithstanding anything in the same or any other contract to the contrary, be determined by either party on giving three months' notice in writing to the other party, but where any such notice is given the party giving the notice shall be liable to pay such compensation as, failing agreement, may be awarded by an arbitrator appointed by the Minister.

(4) The insertion by the patentee in a contract made after the passing of this Act of any condition which by virtue of this section is null and void shall be available as a defence to an action for infringement of the patent to which the contract relates brought while that contract is in force.

(5) Nothing in this section shall—

(a) affect any condition in a contract whereby a person is prohibited from selling any goods other than those of a particular person; or

(b) be construed as validating any contract which would, apart from this section, be invalid; or

(c) affect any right of determining a contract or condition in a contract exercisable independently of this section; or

(d) affect any condition in a contract for the lease of or licence to use a patented article, whereby the lessor or licensor reserves to himself or his nominees the right to supply such new parts of the patented article as may be required to put or keep it in repair.

44. (1) In the case of inventions relating to substances prepared or produced by chemical processes or intended for food or medicine, the specification shall not include claims for the substance itself, except when prepared or produced by the methods or processes of manufacture particularly described and ascertained or by their obvious chemical equivalents:

Chemical products and substances intended for food or medicine.

Provided that in relation to a substance intended for food or medicine a mere admixture resulting only in the aggregation of the known properties of the ingredients of that substance shall not be deemed to be a method or process of manufacture.

(2) In an action for infringement of a patent where the invention relates to the production of a new substance, any substance of the same chemical composition and constitution shall in the absence of proof to the contrary be deemed to have been produced by the patented process.

(3) In the case of any patent for an invention intended for or capable of being used for the preparation or production of food or medicine, the Registrar shall, unless he sees good reason to the contrary, grant to any person applying for the same, a licence limited to the use of the invention for the purposes of the preparation or production of food or medicine but not otherwise; and, in settling the terms of such licence and fixing the amount of royalty or other consideration payable, the Registrar shall have regard to the desirability of making the food or medicine available to the public at the lowest possible price consistent with giving to the inventor due reward for the research leading to the invention.

Any decision of the Registrar under this subsection shall be subject to appeal to the Court.

Appeal to Court.

(4) This section applies only to patents applied for after the commencement of this Act.

45. (1) An invention covered by a patent shall not be deemed to have been anticipated by reason only of its being made available to the public by publication in Guyana—

Provisions as to anticipation.

(a) in a specification left pursuant to an application made in Guyana and dated not less than fifty years before the date of the patent; or

(b) in a specification describing the invention for the purpose of an application for protection in any country outside Guyana made not less than fifty years before that date; or

(c) in any abridgment of or extract from any such specification published under the authority of the Registrar or of the government of any country outside Guyana; or

(d) in a provisional specification of any date not followed by a complete specification.

(2) A patent shall not be held to be invalid by reason only of the invention in respect of which the patent was granted or any part thereof having been published prior to the date of the patent, if the patentee proves to the satisfaction of the Court that the publication was made without the knowledge and consent of the true inventor, and that the matter published was derived or obtained from the true inventor, and if the true inventor learnt of the publication before the date of his application for the patent that he applied for and obtained protection for the invention with all reasonable diligence after learning of the publication:

Provided that the protection afforded by this subsection shall not extend to a patentee who has or whose predecessors in title (which expression shall include the applicant for the patent) have commercially worked the invention in Guyana otherwise than for the purpose of reasonable trial of the invention prior to the date of the application for the patent.

Discomformity.

46. A patent shall not be held to be invalid on the ground that the complete specification claims a further or different invention to that contained in the provisional, if the invention therein claimed, so far as it is not contained in the provisional, was novel at the date when the complete specification was put in, and the applicant was the first and true inventor thereof.

47. (1) If the person claiming to be inventor of an invention dies without making an application for a patent for the invention, application may be made by, and a patent for the invention granted to, his legal representative.

Patent on application of representative of deceased inventor.

(2) Every such application must contain a declaration by the legal representative that he believes the deceased to be the true and first inventor of the invention.

48. 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 issue a copy thereof certified under his hand and the seal of the Patent Office.

Loss or destruction of patent.

49. A person making a request to the Registrar in the prescribed manner as respects any patent specified in the request or as respects any application for a patent so specified, for information to be furnished to him by the Registrar of any such matters as may be prescribed affecting that patent or application, shall be entitled, subject to payment of the prescribed fees, to have information furnished to him accordingly.

Requests for information as to patent or patent application.

50. (1) The exhibition of an invention at an industrial or international exhibition, certified as such by the Minister, 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 privily or consent of the inventor, or the reading of a paper by an inventor before a learned society or the publication of the paper in the society's transactions, shall not prejudice the right of the inventor to apply for and obtain a patent in respect of the invention or the validity of any patent granted on the application:

Provisions as to exhibitions.

Provided that—

(a) the exhibitor, before exhibiting the invention, or the person reading such paper or permitting such publication,

LAWS OF GUYANA

gives the Registrar the prescribed notice of his intention to do so; and

(b) the application for a patent is made before or within six months from the date of the opening of the exhibition, or the reading or publication of such paper.

(2) The Minister may by order apply this section to any exhibition mentioned in the order in like manner as if it were an industrial or international exhibition certified as such by the Minister, and any such order may provide that the exhibitor shall be relieved from the condition of giving notice to the Registrar of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as may be stated in the order.

Publication of journal, indexes, etc.

51. (1) The Registrar may issue periodically a journal of patented inventions, as well as reports of patent cases decided by courts of law, reports of decisions of the Registrar, or of the Appeal Tribunal, and any other information that he may deem generally useful or important.

(2) Provision may be made by the Registrar for keeping on sale copies of such journal, and also of all complete specifications of patents in force, with any accompanying drawings.

(3) The Registrar may prepare and publish in such form and at such times as he deems expedient, such indexes, abridgments of specifications, catalogues, and other works relating to inventions, as he thinks fit.

Models for Chief Education Officer.

52. The Chief Education Officer may at any time require a patentee to furnish him with a model of his invention on payment to the patentee of the cost of the manufacture of the model, the amount to be settled, in case of dispute, by the Minister.

Special provisions as to vessels, aircraft and land vehicles. [10 of 1938]

53. (1) Subject to the provisions of this section, the rights of a patentee shall not be deemed to be infringed—

(a) by the use on board a foreign vessel of the patented invention in the body of the vessel or in the machinery, tackle, apparatus or other accessories thereof, if the vessel

comes into the territorial jurisdiction waters of Guyana temporarily or accidentally only, and the invention is used exclusively for the actual needs of the vessel;

(b) by the use of the patented invention in the construction or working of a foreign aircraft or land vehicle or of the accessories thereof if the aircraft or vehicle comes into Guyana temporarily or accidentally only.

(2) This section shall apply only to vessels, aircraft and land vehicles of Guyana and to vessels, aircraft and land vehicles of a foreign state with respect to which the Minister by order declares that the laws thereof confer corresponding rights with respect to the use of inventions in vessels, aircraft and land vehicles of Guyana when coming into the foreign state or the territorial waters thereof.

The Minister may apply the provisions of this section to vessels, aircraft and land vehicles of any part of the Commonwealth outside Guyana in like manner as to vessels, aircraft and land vehicles of a foreign state.

(3) For the purposes of this section—

“vessels and aircraft” shall be deemed to be vessels and aircraft of the country in which they are registered, and land vehicles shall be deemed to be vehicles of the country within which the owners are ordinarily resident.

TITLE II

Registration of United Kingdom Patents

54. Any person being the grantee of a patent in the United Kingdom or any person deriving his right from such grantee by assignment, transmission or other operation of law may apply within three years from the date of issue of the patent to have such patent registered in Guyana. Where any partial assignment or transmission has been made, all proper parties shall be joined in the application for registration.

Registration of patents issued in the United Kingdom.

LAWS OF GUYANA

64

Cap. 90:03

Patents and Designs

Application for registration.

55. Every such application shall be accompanied by a certified copy of the specification or specifications (including drawings, if any) of the United Kingdom Patent and a certificate of the Comptroller General of the United Kingdom Patent Office giving full particulars of the issue of the patent on such specification or specifications.

Registration on requirements being complied with.

56. (1) Upon such application being received, together with the documents mentioned in section 55, the Registrar shall register the same in the register of patents kept under section 32 and shall issue a certificate of registration.

(2) The Registrar shall thereupon give notice in the *Gazette* of the fact that such certificate has been issued.

Effect of registration.

57. Such certificate of registration shall confer on the applicant privileges and rights subject to all conditions established by the law of Guyana as if a patent had been issued to him in Guyana under this Act.

Duration of privileges on registration.

58. Privileges and rights so granted shall date from the date of the patent in the United Kingdom and shall continue in force only so long as the patent remains in force in the United Kingdom:

Provided that no action for infringement shall be entertained in respect of any manufacture, use or sale of the invention prior to the date of the publication in the *Gazette* of the notice of issue of the certificate of registration in Guyana.

Right of persons affected to apply to the Court for declaration as to privileges acquired by registration. [10 of 1938 23 of 1956]

59. The Court or any judge thereof shall have power upon the application of any person who alleges that his interests have been prejudicially affected by the issue of a certificate of registration, to declare that the exclusive privileges and rights conferred by such certificate of registration have not been acquired on any of the grounds, *mutatis mutandis*, upon which the United Kingdom patent might be revoked under the law for the time being in force in the United Kingdom.

Such grounds shall be deemed to include the manufacture, use or sale of the invention in Guyana before the priority date applicable to the patent in the United Kingdom, but not to include the manufacture,

use or sale of the invention in Guyana by some person or persons after the priority date applicable to the patent in the United Kingdom and before the date of issue of the certificate of registration under section 56 of this Act.

For the purposes of this subsection, the expression “priority date” in its application to a patent in the United Kingdom has the meaning assigned to it in section 5 of the Patents Act, 1949, of the United Kingdom.

12, 13 and 14
Geo. VI
c. 87

60. Whenever the specification or drawings of a United Kingdom patent registered in Guyana has or have been amended by way of disclaimer, correction or explanation, according to the law of the United Kingdom, a request accompanied by a copy of the specification and drawings (if any) as amended, duly certified by the Comptroller General of the United Kingdom Patent Office, may be made to the Registrar to substitute a copy of the specification and drawings as amended, for the specification and drawings as originally filed.

Amendment of
specifications,
etc., of the
United
Kingdom
Patent.

61. Where a person becomes entitled by assignment, transmission, or other operation of law to the privileges and rights conferred by a certificate of registration or to any interest therein, he may make application in the prescribed manner to the Registrar for the entry on the register of such assignment, transmission, or other instrument affecting the title or giving an interest therein.

Registration of
assignments,
etc.

PART II DESIGNS

TITLE I

Registration of Designs

62. (1) The Registrar may, on the application made in the prescribed form and manner of any person claiming to be the proprietor of any new or original design not previously published in Guyana register the design under this Part.

Application
for registration
of designs.

(2) The same design may be registered in more than one class, and, in case of doubt as to the class in which a design ought to be registered, the Registrar may decide the question.

(3) The Registrar may, if he thinks fit, refuse to register any design presented to him for registration, but any person aggrieved by any such refusal may appeal to the Appeal Tribunal, and the Appeal Tribunal shall, after hearing the applicant and the Registrar, if so required, make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(4) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within the prescribed time shall be deemed to be abandoned.

(5) A design when registered shall be registered as of the date of the application for registration.

Registration of designs in new classes.

63. (1) Where a design has been registered in one or more classes of goods the application of the proprietor of the design to register it in some one or more other classes shall not be refused, nor shall the registration thereof be invalidated—

- (a) on the ground of the design not being a new or original design, by reason only that it was so previously registered; or
- (b) on the ground of the design having been previously published in Guyana, by reason only that it has been applied to goods of any class in which it was so previously registered:

Provided that such subsequent registration shall not extend the period of copyright in the design beyond that arising from the previous registration.

(2) Where the proprietor of a registered design applies for the registration in the same class of goods of a design consisting of the registered design with modifications or variations not sufficient to

alter the character or substantially to affect the identity thereof, the application shall not be refused, nor shall the registration of that other design be invalidated—

- (a) on the ground that it is not a new or original design, by reason only of the registration of the registered design; or
- (b) on the ground that it has been previously published in Guyana, by reason only that the registered design has been applied to the goods in respect of which it is registered:

Provided that the period of copyright conferred by the registration of that other design shall not extend beyond the expiration of the original and any extended period of copyright in the registered design.

64. (1) The Registrar shall grant a certificate of registration to the proprietor of the design when registered.

Certificate of registration.

(2) The Registrar may, in case of loss of the original certificate, or in any other case in which he deems it expedient, furnish one or more copies of the certificate.

65. (1) There shall be kept at the Patent Office a book called the register of designs wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may be prescribed.

Register of designs.

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

(3) The register of designs shall be *prima facie* evidence of any matters by this Act directed or authorised to be entered therein.

COPYRIGHT IN REGISTERED DESIGNS

66. (1) When a design is registered, the registered proprietor of the design shall, subject to this Act, have copyright in the design during five years from the date of registration.

Copyright on registration.
[30 of 1949]

(2) If before the expiration of the said five years, or within such further time (not exceeding three months) as the Registrar may on a request made to him before the expiration of that further time allow, application for the extension of the period of copyright is made to the Registrar in the prescribed manner, the Registrar shall on payment of the prescribed fee extend the period of copyright for a second period of five years from the expiration of the original period of five years.

(3) If before the expiration of such second period of five years, or within such further time (not exceeding three months) as the Registrar may on a request made to him before the expiration of that further time allow, application for the extension of the period of copyright is made to the Registrar in the prescribed manner the Registrar may, subject to any rules under this Act, on payment of the prescribed fee, extend the period of copyright for a third period of five years from the expiration of the second period of five years.

Requirements
before delivery
on sale.

67. (1) Before delivery on sale of any articles to which a registered design has been applied, the proprietor shall cause each such article to be marked with the prescribed mark, or with the prescribed words or figures denoting that the design is registered; and if he fails to do so the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.

(2) Where a representation is made to the Minister by or on behalf of any trade or industry that in the interests of the trade or industry it is expedient to dispense with or modify as regards any class or description of articles any of the requirements of this section as to marking, the Minister may, if he thinks fit, by regulations under this Act dispense with or modify such requirements as regards any such class or description of articles to such extent and subject to such conditions as he thinks fit.

68. The disclosure of a design by the proprietor to any other person, in such circumstances as would make it contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person other than the proprietor of the design, and the acceptance of a first and confidential order for goods bearing a new or original textile design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof if registration thereof is obtained subsequently to the disclosure or acceptance.

Effect of disclosure on copyright.

69. (1) During the existence of copyright in a design, or such shorter period as may be prescribed, the design shall not be open to inspection except by the proprietor or a person authorised in writing by him, or a person authorised by the Registrar or by the Court, and furnishing such information as may enable the Registrar to identify the design, and shall not be open to the inspection of any person except in the presence of the Registrar, or of an officer acting under him, and on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof:

Inspection of registered designs.

Provided that where registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.

(2) After the expiration of the copyright in a design or such shorter period as aforesaid, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

(3) Different periods may be prescribed under this section for different classes of goods.

70. On the request of any person furnishing such information as may enable the Registrar to identify the design, and on payment of the prescribed fee, the Registrar shall inform such person whether the registration still exists in respect of the design, and if so, in respect of what classes of goods, and shall state the date of registration, and the name and address of the registered proprietor.

Information as to existence of copyright.

LAWS OF GUYANA

70

Cap. 90:03

Patents and Designs

Cancellation
of registration
of designs.
[10 of 1938]

71. (1) At any time after the registration of a design any person interested may apply to the Registrar—

(a) for the cancellation of the registration of the design on the ground that the design has been published in Guyana or registered in the United Kingdom prior to the date of registration;

(b) for the grant of a compulsory licence on the ground that the design is applied by manufacture to any article in a country outside Guyana and is not so applied by manufacture in Guyana to such an extent as is reasonable in the circumstances of the case,

and the Registrar may make such order on the application as he considers just:

Provided that the Registrar shall not make any order under paragraph (b) which is at variance with any treaty, convention, arrangement or engagement with any country outside Guyana.

(2) An appeal shall lie from any order of the Registrar under this section to the Appeal Tribunal, and the Registrar may at any time refer any such application to the Appeal Tribunal for trial.

Registration of
designs to bind
the State.

72. The registration of a design shall have to all intents the like effect as against the State as it has against a subject:

Provided that the provisions of section 33 shall apply to registered designs as though those provisions were herein re-enacted and in terms made applicable to registered designs.

INDUSTRIAL AND INTERNATIONAL EXHIBITIONS

Provisions as
to exhibitions.

73. (1) The exhibition at an industrial or international exhibition certified as such by the Minister, or the exhibition elsewhere during the period of the holding of the exhibition, without the privily or consent of the proprietor, of a design, or of any article to which a design is

applied, or the publication, during the holding of any such exhibition, of a description of a design, shall not prevent the design from being registered, or invalidate the registration thereof:

Provided that—

- (a) the exhibitor, before exhibiting the design or article, or publishing a description of the design, gives the Registrar the prescribed notice of his intention to do so; and
- (b) the application for registration is made before or within six months from the date of the opening of the exhibition.

(2) The Minister may by order apply this section to any exhibition mentioned in the order in like manner as if it were an industrial or international exhibition certified as such by the Minister, and any such order may provide that the exhibitor shall be relieved from the condition of giving notice to the Registrar of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as may be stated in the order.

LEGAL PROCEEDINGS

74. (1) During the existence of copyright in any design it shall not be lawful for any person—

Piracy of registered design.

- (a) for the purposes of sale to apply or cause to be applied to any article in any class of goods in which the design is registered the design or any fraudulent or obvious imitation thereof, except with the licence or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or
- (b) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article without the consent of the registered proprietor to publish or expose or cause to be published or exposed for sale that article.

(2) If any person acts in contravention of this section he shall be liable for every contravention to pay to the registered proprietor of the design a sum not exceeding two hundred and fifty dollars, recoverable

as a simple contract debt, or if the proprietor elects to bring an action for the recovery of damages for such contravention, and for an injunction against the repetition thereof, he shall be liable to pay such damages as may be awarded and to be restrained by injunction accordingly:

Provided that the total sum recoverable as a simple contract debt in respect of any one design shall not exceed five hundred dollars.

Application of certain provisions of the Act as to patents to designs.

75. The provisions of this Act with regard to certificates of the validity of a patent, and to the remedy in case of groundless threats of legal proceedings by a patentee, shall apply with the necessary modifications in the case of registered designs in like manner as they apply in the case of patents.

TITLE II

United Kingdom Designs

Privileges conferred on registered proprietor of a design registered in the United Kingdom extended to Guyana. [10 of 1938] Protection of an innocent infringer of copyright in a design registered in the United Kingdom from suit for damages.

76. Subject to the provisions of sections 77 and 78 of this Act, the registered proprietor of any design registered in the United Kingdom under the Patent and Designs Acts, 1907 to 1932, of the United Kingdom or any Act amending or substituted for those Acts shall enjoy in Guyana the like privileges and rights as though the design had registered in Guyana under this Act.

77. The registered proprietor of such a design shall not be entitled to recover any damages in respect of any infringement of copyright in a design from any defendant who proves that at the date of the infringement he was not aware nor had any reasonable means other than by inquiry outside Guyana of making himself aware of the existence of the registration of the design:

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

78. The Court shall have power upon the application of any person who alleges that his interests have been prejudicially affected to declare upon any of the grounds upon which the United Kingdom registration might be cancelled under the law for the time being in force in the United Kingdom that exclusive privileges and rights in a design have not been acquired in Guyana under the provisions of this Part. Such grounds shall be deemed to include the publication of the design in Guyana prior to the date of registration of the design in the United Kingdom.

Court may declare privileges not acquired.

PART III

GENERAL

Patent Office and Proceedings thereat

79. (1) The Patent office shall be situate at the Deeds Registry, Georgetown, Demerara, or at any other place that may be appointed by the Minister.

Patent Office.

(2) The Patent Office shall be under the immediate control of the Registrar.

(3) Any act or thing directed to be done by or to the Registrar may be done by or to a Deputy Registrar or by or to any other officer authorised by the Registrar.

80. (1) The Registrar may appoint any person as an examiner.

Examiner.
[29 of 1961]

(2) The expenses of the execution of this Act shall be paid out of money provided by Parliament.

81. (1) Impressions of the seal of the Patent Office shall be judicially noticed and admitted in evidence.

Seal of Patent Office.

(2) The seal of the Patent Office shall be the seal of the Deeds Registry with the words "Patent Office" added thereto.

LAWS OF GUYANA

74

Cap. 90:03

Patents and Designs

Fees. **82.** There shall be paid in respect of the grant and the registration of patents and the registration of designs, and applications therefor, and in respect of other matters with relation to patents and designs under this Act, such fees as may be prescribed by the Minister.

PROVISIONS AS TO REGISTERS AND OTHER DOCUMENTS
IN PATENT OFFICE

Trust not to be entered in registers. **83.** There shall not be entered in any register kept under this Act or be receivable by the Registrar, any notice of any trust expressed, implied or constructive.

Inspection of an extracts from registers. **84.** Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to this Act; and certified copies, sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

Privilege of reports of examiners. **85.** Reports of examiners made under this Act shall not in any case be published or be open to public inspection, and shall not be liable to production or inspection in any legal proceeding, unless the Court or officer having power to order discovery in such legal proceeding certifies that such production or inspection is desirable in the interests of justice, and ought to be allowed:

Provided that, on application being made by any person in the prescribed form, the Registrar may disclose the result of a search made under section 9 or 10 on any particular application for the grant of a patent where either—

- (a) the complete specification has been accepted; or
- (b) the complete specification has been published and the application has become void.

Prohibition of publication of specification, drawings, etc., abandoned, **86.** (1) Where an application for a patent has been abandoned, or become void, the application, the specifications and the drawings samples and specimens (if any) accompanying or left in connection

with such application, shall not, save as otherwise expressly provided by this Act, at any time be open to public inspection or be published by the Registrar.

where application abandoned, etc.

(2) Where an application for a design has been abandoned or refused the application and any drawings, photographs, tracings, representations, or specimens left in connection with the application shall not at any time be open to public inspection or be published by the Registrar.

87. The Registrar may, on request in writing accompanied by the prescribed fee—

Power for Registrar to correct clerical errors.

- (a) correct any clerical error in or in connection with an application for a patent or in any patent or any specification;
- (b) cancel the registration of a design either wholly or in respect of any particular goods in connection with which the design is registered;
- (c) correct any error in an application for the registration of or in the representation of a design or in the name or address of the proprietor of any patent or design, or in any other matter which is entered upon the register of patents or the register of designs:

Provided that where a request is made for a correction under paragraph (a) and it appears to the Registrar that the correction would materially alter the meaning or scope of the document to which the request relates, and ought not to be made without notice to persons affected thereby, he shall require a notice of the nature of the proposed correction to be advertised in the prescribed manner, and any person may within the prescribed time and in the prescribed manner give notice at the Patent Office of opposition to the request 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.

88. (1) Where a person becomes entitled by assignment, transmission, or other operation of law to a patent or to the copyright in a registered design, he shall make application to the Registrar in the

Registration of assignments, etc.

prescribed manner to register his title, and the Registrar shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of such patent or design and shall cause an entry to be made on the register of the assignment, transmission, or other instrument affecting the title.

(2) Where any person becomes entitled as mortgagee, licensee, or otherwise to any interest in a patent or design, he shall make application to the Registrar in the prescribed manner to register his title, and the Registrar shall, on receipt of such application and on proof of title to his satisfaction, cause notice of the interest to be entered in the register of patents or designs, as the case may be, with particulars of the instrument, if any, creating such interest.

(3) The person registered as the proprietor of a patent or design shall, subject to this Act and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licences as to or otherwise deal with the patent or design, and to give effectual receipts for any consideration for any such assignment, licence or dealing:

Provided that any equities in respect of the patent or design may be enforced in like manner as in respect of any other personal property.

(4) Except in applications made under section 89, a document or instrument in respect of which no entry has been made in the register in accordance with subsections (1) and (2), shall not be admitted in evidence in any court in proof of the title to a patent or copyright in a design or to any interest therein unless the court otherwise directs.

Rectification
of registers by
Court.

89. (1) The Court may, on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of patents or designs of any entry or by any entry made in either such register without sufficient cause, or by any entry wrongly remaining on either such register, or by an error or defect in any entry in either such register, make such order for making, expunging, or varying such entry as it may think fit.

(2) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of a register.

(3) The prescribed notice of any application under this section shall be given to the Registrar, who shall have the right to appear and be heard thereon, and shall appear if so directed by the Court.

(4) Any order of the Court rectifying a register shall direct that notice of the rectification be served on the Registrar in the prescribed manner, who shall upon the receipt of such notice rectify the register accordingly.

POWERS AND DUTIES OF REGISTRAR

90. Where any discretionary power is by or under this Act given to the Registrar, he shall not exercise that power adversely to the applicant for a patent, or for amendment of a specification, or for registration of a design without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard.

Exercise of
discretionary

91. (1) The Registrar shall, in any proceedings before him under this Act, have power by order to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid, and any such order may be made a rule of court.

Costs and
security for
costs.

(2) If any party giving notice of any opposition under this Act, or applying to the Registrar for the revocation of a patent, or for the cancellation of the registration of a design or for the grant of a compulsory licence in relation to a patent or to a registered design, or giving notice of appeal from any decision of the Registrar under this Act, neither resides nor carries on business in Guyana, the Registrar, or in case of appeal to the Appeal Tribunal or the Court, the Appeal Tribunal or the Court may require such party to give security for the costs of the proceedings or appeal, and in default of such security being given may proceed to treat the proceedings or appeal as abandoned.

Frivolous applications and applications for patents for illegal inventions.

92. (1) If any application is made to the Registrar to grant a patent for an invention which is so obviously contrary to well-established natural laws that the application is frivolous or to grant a patent for an invention, or to register a design, of which the use would, in his opinion, be contrary to law or morality the Registrar may refuse the application, or may, in the case of an invention any particular use of which would, in his opinion, be contrary to law, require as a condition of granting a patent the insertion in the specification of such disclaimer as respects that particular use of the invention or any such other reference to the illegality thereof as he thinks fit.

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

Provisions as to failure to comply with certain time limits.

93. (1) No patent granted, and no extension of the period of copyright in a registered design made, before the commencement of this section shall be treated as invalid by reason only of an act done before the commencement of this section by an applicant, the Registrar or any other person, not having been done at the time the said act was done, within the time then limited for the doing thereof by this Act.

(2) In the case of an application for a patent made before the commencement of this section which has not up to that time been treated by the Registrar otherwise than as a subsisting application, but which under this Act for the time being in force, is deemed to have been abandoned, or has become void, at any time before the commencement of this section, by reason only of the failure of the applicant, or of the Registrar or of any other person, to comply with any requirement as to time limits of this Act as for the time being in force, the Registrar may, if it appears to him that there would have been no substantial non-compliance with this Act, if this section had been in force at the date of the failure, permit the application to proceed, and thereupon the application shall be treated as not having been abandoned, or as not having become void, as the case may be.

EVIDENCE, ETC.

94. (1) Subject to rules under this Act in any proceeding under this Act before the Registrar the evidence shall be given by statutory declaration in the absence of directions to the contrary; but, in any case in which the Registrar thinks it right so to do, he may take evidence *viva voce* in lieu of or in addition to evidence by declaration or allow any declarant to be cross-examined on his declaration. Any such statutory declaration may in the case of appeal be used before the Court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

Evidence
before
Registrar.

(2) The Registrar shall in respect of discovery and production of documents and, where any evidence is taken *viva voce*, in respect of requiring the attendance of witnesses and taking evidence on oath, be in the same position in all respects as an official referee of the Supreme Court in England.

95. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing which he is authorised by this Act to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Certificate of
Registrar to be
evidence.

96. Printed or written copies or extracts, purporting to be certified by the Registrar and sealed with the seal of the Patent Office, of or from patents, specifications, and other documents in the Patent Office, and of or from registers and other books kept there, shall be admitted in evidence in all courts in Guyana and in all proceedings, without further proof or production of the originals.

Evidence of
documents in
Patent Office.

97. Any application, notice, other document authorised or required to be left, made, or given at the Patent Office or to the Registrar, or to any other person under this Act, may be sent by post.

Applications
and notices by
post.

98. Where the last day fixed by this Act for doing anything under this Act falls on any day specified in regulations under this Act as an excluded day, the regulations may provide for the thing being done on the next following day not being an excluded day.

Excluded days.

LAWS OF GUYANA

80

Cap. 90:03

Patents and Designs

Declaration by
infant, etc.

99. (1) If any person is, by reason of infancy, unsoundness of mind, or other disability incapable of making any declaration or doing anything required or permitted by this Act, the guardian or committee (if any) of the person subject to the disability, or, if there be none, any person appointed by any court possessing jurisdiction in respect of his property, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the person subject to the disability.

(2) An appointment may be made by the Court for the purposes of this section upon the petition of any person acting on behalf of the person subject to the disability or of any other person interested in the making of the declaration or the doing of the thing.

Enforcement
of order for
grant of
licence.

100. Any order for the grant of a licence under this Act shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a licence executed by the patentee or proprietor of a registered design as the case may be and all other necessary parties.

REGISTER AND LICENSING OF PATENT AGENTS

Licensed
patent agents.
[4 of 1972]
c. 90:01

101. (1) The Registrar may grant licences from year to year to any fit and proper person, being a Commonwealth citizen, to be a patent agent for the purpose of transacting business under this Act and the Trade Marks Act.

(2) The Registrar shall keep a register (hereinafter called a register of patent agents) of all fit and proper persons as aforesaid.

(3) It shall be lawful for the Registrar upon proof of incapacity, malfeasance or discreditable conduct on the part of any such patent agent, with the approval of the Minister, to revoke the licence or the authority to obtain a licence given as aforesaid, and thereupon he shall remove his name from the register of patent agents.

(4) A licence to be a patent agent shall not be granted to a person who is not ordinarily resident in Guyana:

Provided that any person who has been refused a licence under subsection (1) or whose name has been removed from the register under subsection (4) shall have a right of appeal to the Minister whose decision shall be final.

102. (1) No person shall practice, describe himself, or hold himself out, or permit himself to be described or held out, as a patent agent, unless—

Unlicensed
patent agent.

- (a) in the case of an individual, he is licensed as a patent agent;
- (b) in the case of a firm, every partner of the firm is so licensed;
- (c) in the case of a company, every director and the manager (if any) of the company is so licensed.

(2) If any person contravenes this section, he shall be liable on summary conviction to a fine of three hundred dollars or in the case of a second or subsequent conviction to a fine of seven hundred and fifty dollars, and in the case of a company every director, manager, secretary, or other officer of the company who is knowingly a party to the contravention shall be guilty of a like offence and liable to a like fine.

(3) For the purposes of this section and of the last preceding section the expression “patent agent” means a person, firm, or company carrying on for gain in Guyana the business of applying for or obtaining patents or the registration of patents, designs, or trade marks.

(4) Notwithstanding anything in any enactment prescribing the time within which proceedings may be brought before a court of summary jurisdiction, proceedings for an offence under this section may be commenced at any time within twelve months from the date on which the alleged offence was committed.

LAWS OF GUYANA

POWER, ETC., OF MINISTER

Power of
Minister to
make
regulations.

103. The Minister may make regulations and do such things as he thinks expedient, subject to this Act—

(a) for regulating the practice of registration under this Act;

(b) for classifying goods for the purposes of designs;

(c) for making or requiring duplicates of specifications, drawings, and other documents;

(d) for securing and regulating the publishing and selling of copies, at such prices and in such manner as the Minister thinks fit, of specifications, drawings, and other documents;

(e) for securing and regulating the making, printing, publishing, and selling of indexes to, and abridgements of, specifications and other documents in the Patent Office; and providing for the inspection of indexes and abridgments and other documents;

(f) for regulating and presentation of copies of Patent Office publications to patentees and to public authorities, bodies, and institutions at home and abroad;

(g) for regulating the keeping of the register of patent agents under this Act;

(h) for determining the conditions under which a design shall be deemed to be used as a model or pattern to be multiplied by any industrial process within the meaning of section 22 of the Copyright Act, 1911;

(i) generally for regulating the business of the Patent Office, and all things by this Act placed under the direction or control of the Registrar.

1 & 2 Geo. V,
c. 46.

Proceedings of
the Minister.

104. (1) All documents purporting to be orders made by the Minister and signed by the Minister, the Permanent Secretary, or by any person authorised in that behalf by the Minister, shall be received in evidence, and shall be deemed to be such orders without further proof, unless the contrary is shown.

(2) A certificate, signed by the Minister, the Permanent Secretary that any order made or act done is the order or act of the Minister, shall be conclusive evidence of the fact so certified.

OFFENCES

105. (1) If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanour. Offences.

(2) If any person falsely represents that any article sold by him is a patented article, or falsely describes any design applied to any article sold by him as registered, he shall be liable for every offence, on summary conviction, to a fine of seventy-five dollars.

(3) If any person sells an article having stamped, engraved, or impressed thereon or otherwise applied thereto the word "patent", "patented", "registered", or any other word expressing or implying that the article is patented or that the design applied thereto is registered, he shall be deemed for the purposes of this section to represent that the article is a patented article or that the design applied thereto is a registered design.

(4) Any person who, after the copyright in a design has expired, puts or causes to be put on any article to which the design has been applied the word "registered", or any word or words implying that there is a subsisting copyright in the design, shall be liable on summary conviction to a fine of seventy-five dollars.

(5) If any person uses on his place of business, or on any document issued by him, or otherwise, the words "Patent Office", or any other words suggesting that his place of business is officially connected with, or is, the Patent Office, he shall be liable on summary conviction to a fine of three hundred dollars.

LAWS OF GUYANA

84

Cap. 90:03

Patents and Designs

Unauthorised assumption of National Coat of Arms.
[4 of 1972]

106. The grant of a patent under this Act shall not be deemed to authorise the patentee to use the National Coat of Arms of Guyana or to place such Coat of Arms on any patented article.

Provisions as to “the Court”.

107. Where by virtue of this Act a decision of the Registrar is subject to an appeal to the Court, or a petition may be referred or presented to the Court, the appeal shall, except in the case of a petition for the revocation of a patent under section 29, and subject to and in accordance with rules of the High Court, be made and the petition referred or presented to such judge of the High Court as the Chief Justice may select for the purpose. An appeal shall not lie from any decision of such judge except in the case of an order revoking or confirming the revocation of a patent.

Tribunal for appeals from the Registrar.

108. (1) For the purpose of hearing appeals from decisions of the Registrar, which, by virtue of this Act, are subject to an appeal to the Appeal Tribunal, there shall be constituted a Tribunal (in this Act referred to as the “Appeal Tribunal”) to consist of a judge of the High Court to be nominated by the Chief Justice.

(2) The expenses of the Appeal Tribunal shall be defrayed and the fees to be taken therein may be fixed as if the Tribunal were a Court of the High Court, but subject as aforesaid appeals to the Tribunal shall not be deemed to be proceedings in the High Court.

(3) The Appeal Tribunal may—

(a) examine witnesses on oath and administer oaths for that purpose;

(b) make rules regulating appeals to the Tribunal and the practice and proceedings before the Tribunal under this Act; and

(c) in any proceedings under this Act by order award to any party such costs as the Tribunal consider reasonable and direct how and by what parties they are to be paid and any such order may be made a rule of court,

so however that, as respects rights of audience and the awarding of costs, the like practice shall be observed as, before the commencement of this Act, was observed in the hearing of appeals by the Attorney-General in the United Kingdom.

(4) The Appeal Tribunal may, if it thinks fit, obtain the assistance of an expert, who shall be paid such remuneration as the Tribunal, with the consent of the Minister responsible for finance, may determine.

CONSTRUCTION AND SAVINGS

109. This Act shall, except where otherwise expressly provided, apply to patents granted and applications for and specifications relating to patents made and deposited, and designs registered and applications for registration of designs made, before as well as after the passing of this Act. Construction.

110. Nothing in this Act shall take away, abridge or prejudicially affect the prerogative of the State in relation to the granting of any letters patent or to the withholding of a grant thereof. Saving for prerogative.