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CHAPTER 324

INDUSTRIAL PROPERTY

An Act to consolidate and amend the law relating to patents for inventions and trade marks, to provide for the protection of industrial designs, and to penalise the application of false trade descriptions to goods.

*85 cf 1965
E L A O, 1974
18 cf 1975
5 cf 1987
24 cf 1994*

*[Assent 21st December, 1965]
[Commencement 18th December, 1976]*

PART I PRELIMINARY

1. This Act may be cited as the Industrial Property Act. Short title
2. In this Act, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say — Interpretation
 - “article” means (as respects designs) any article of manufacture and includes any part of an article if that part is made and sold separately;
 - “assignee” includes the personal representatives of a deceased assignee and references to the assignee of any person include references to the assignee of the personal representatives or assignee of that person;
 - “Court” means the Supreme Court and includes a judge of the Court sitting in chambers;
 - “date of application”, in relation to any document filed under this Act, means the date on which the document is filed or, where it is deemed by virtue of any provision of this Act or of rules made thereunder to have been filed on any different date, means the date on which it is deemed to be filed;
 - “design” has the meaning assigned to it by subsection (1) of section 30 of this Act;

“exclusive licence” means (as respects patents) a licensee from a patentee which confers on the licensee and persons authorised by him to the exclusion of all other persons (including the patentee), any right in respect of the patented invention and “exclusive licensee” shall be construed accordingly;

“journal” means the official periodical journal provided for by section 45 of this Act;

E L A O, 1974

“Minister” means the Minister responsible for Copyright, Patents and Trade Marks;

“patent” means Letters Patent for an invention;

“patent of addition” means a patent granted in accordance with section 14 of this Act;

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

“prescribed” means prescribed by rules made by the Minister under this Act;

“priority date” (in relation to patents) has the meaning assigned to it by section 8 of this Act;

“priority date of the claim” (in relation to designs) has the meaning assigned to it by section 39 of this Act;

“proprietor” (in relation to designs) has the meaning assigned to it by section 32 of this Act;

“state of the art” has the meaning assigned to it by section 4 of this Act.

PART II PATENTS

Application for and Grant of a Patent

Right to apply

3. (1) An application for a patent for an invention may be made under the provisions of this Act in respect of any invention which is susceptible of industrial application, which is new and which involves an inventive step.

(2) An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry including agriculture.

4. (1) An invention shall be considered to be new if it does not form part of the state of the art. Novelty

(2) In this Act the expression the “state of the art” shall be held to comprise everything made available to the public in The Bahamas or elsewhere by means of written or oral description, by use or in any other way before the date of filing of the application for a patent or the priority date validly claimed in respect thereof.

(3) An invention shall not be considered to have been made available to the public solely by reason of the fact that within the period of six months preceding the filing of the patent application the inventor or his successor in title has exhibited it at an exhibition certified by the Registrar General for the purposes of this subsection.

5. (1) An application for a patent for an invention may be made by any of the following persons, that is to say — Persons entitled to make application

- (a) by any person claiming to be the true and first inventor;
- (b) by any person being the assignee of the person claiming to be the true and first inventor in respect of the right to make such an application,

and may be made by that person either alone or jointly with any other person.

(2) Without prejudice to the foregoing provisions of this section, an application for a patent for an invention in respect of which protection has been applied for in a convention country may be made by the person by whom the application for protection was made or by the assignee of that person and convention priority as hereinafter provided may be claimed in respect of such an application for a patent:

Provided that no application shall be made by virtue of this subsection after the expiration of twelve months from the date of the application for protection in a convention country or where more than one such application for protection has been made, from the date of the first application.

(3) An application for a patent may be made under subsection (1) or subsection (2) of this section by the personal representatives of any deceased person who, immediately before his death, was entitled to make such an application.

Application
18 *cf* 1975, s 6

6. (1) Every application for a patent shall be made in the form prescribed and shall be filed at the Industrial Property Office.

18 *cf* 1975, s 2

(2) If the application is made under subsection (1) of section 5 of this Act by virtue of an assignment of the right to apply for a patent for the invention, there shall be furnished with the application or within such period as may be prescribed after the filing of the application a declaration signed by the person claiming to be the true and first inventor or his personal representative, stating that he assents to the making of the application.

(3) Every application shall name the person claiming to be the true and first inventor who shall have the right to be mentioned as such in the patent.

(4) Every application in respect of which a claim for convention priority is made shall be accompanied by a written declaration by the applicant specifying the date and number of the earlier application, the country in which such application was made as well as, within a maximum period of three months from the date of the later application, a copy of the earlier application certified as correct by the authority which received the application.

(5) Where applications for protection have been made in one or more convention countries in respect of two or more inventions which are cognate or of which one is a modification of another, a single application may be made in respect of those inventions at any time within twelve months from the date of the earliest of the said applications for protection:

Provided that the requirements of subsection (4) of this section shall in the case of any such application apply separately to the applications for protection in respect of each of the said inventions.

Contents of
specification

7. (1) Every application for a patent shall be accompanied by a specification of the invention which shall describe the invention and shall begin with a title indicating the subject to which the invention relates.

(2) Drawings may, and shall if the Registrar General so requires, be supplied for the purposes of any specification and any drawings so supplied shall, unless the

Registrar General otherwise directs, be deemed to form part of the specification.

- (3) Every specification —
 - (a) shall particularly describe the invention and the methods by which it is to be performed;
 - (b) shall disclose the best method of performing the invention which was known to the applicant (or his predecessor in title) at the relevant priority date and for which he is entitled to claim protection; and
 - (c) shall end with a claim or claims defining the scope of the invention claimed.

(4) The claim or claims of a specification must relate to a single invention, must be clear and succinct and must be fairly based on the matter disclosed in the specification.

(5) Subject to the foregoing provisions of this section a specification describing and claiming an invention in respect of which convention priority is sought may describe and claim developments of or additions to the said invention being developments or additions in respect of which the applicant is entitled to apply for a patent in accordance with the provisions of section 5 of this Act.

8. (1) Every claim of a specification shall have effect from the date prescribed by this section in relation to that claim (in this Act referred to as the priority date); and a patent shall not be invalidated by reason only of the fact that the invention, so far as claimed in any claim of the complete specification, formed part of the state of the art on or after the priority date of that claim.

Priority date of
claims

(2) The priority date to which the applicant claims to be entitled shall be stated in the specification in such manner as may be prescribed.

(3) Where convention priority is claimed and a claim of the specification is fairly based on the matter disclosed in the relevant application for protection in a foreign country, the priority date of that claim shall be the date of that application.

(4) In all other cases the priority date of a claim shall be the date of filing of the specification.

Refusal of
application in
certain cases

9. (1) If it appears to the Registrar General in the case of any application for a patent —

- (a) that the use of the invention in respect of which the application is made is contrary to morality or public order; or
- (b) that it claims as an invention plants or animal varieties or essentially biological processes for the production of plants or animals,

he shall refuse the application.

(2) An appeal shall lie from any decision of the Registrar General under this section.

Examination of
application
18 cf 1975, s 3

10. (1) When the specification has been filed in respect of an application for a patent, the Registrar General shall examine the application and specification and may, if he thinks fit, refer the application and specification to an examiner who shall report thereon to the Registrar General.

(2) If examination reveals that an application for a patent relates to more than one invention, the applicant may divide the application into a certain number of divisional applications and preserve as the date of each the date of the initial application and the benefit of the right of convention priority, if any.

(3) The applicant may also, in accordance with rules made under this Act, on his own initiative divide a patent application and preserve as the date of each divisional application the date of the initial application and the benefit of the right of convention priority, if any.

(4) If the provisions of subsections (4) and (5) of section 6 of this Act have not been complied with an applicant shall not be entitled to convention priority but may nevertheless claim priority based on the date of application in The Bahamas.

18 cf 1975, s 3

(5) If the Registrar General is of the opinion or if, after reference to an examiner, such examiner reports, that the application and the specification filed in pursuance thereof do not comply with the requirements of this Act or of the rules made thereunder, or that there is lawful ground of objection to the grant of a patent in pursuance of the application the Registrar General may either —

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- (i) refuse to proceed with the application; or
 - (ii) require the application or the specification to be amended before he proceeds with the application.

(6) At any time after the application has been filed under this Act and before the acceptance of the specification the Registrar General may at the request of the applicant and upon payment of the prescribed fee, direct that the application shall be post-dated to such date as may be specified in the request:

Provided that —

- (a) no application shall be post-dated under this subsection to a date later than six months from the date on which it was actually made or would but for this subsection be deemed to have been made; and
- (b) an application in respect of which convention priority is claimed shall not be post-dated under this subsection to a date later than the last date on which, under the foregoing provisions of this Act, the application could have been made.

(7) Rules made by the Minister under this Act may make provision for securing that where, at any time after an application has been filed under this Act and before the acceptance of the specification a fresh application is filed in respect of any part of the subject-matter of the first-mentioned application, the Registrar General may direct that the fresh application shall be ante-dated to a date not earlier than the date of filing of the first-mentioned application.

(8) An appeal shall lie from any decision of the Registrar General under subsection (5) of this section.

11. (1) An application for a patent shall be void unless within twelve months from the date of filing of the specification the applicant has complied with all requirements imposed on him by or under this Act whether in connection with the specification or otherwise in relation to the application; and where the application or any specification or, in the case of an application in respect of which a claim for convention priority is made, any document filed as part of the application, has been returned to the applicant by the Registrar General in the

Acceptance of
specification

course of the proceedings, the applicant shall not be deemed to have complied with the said requirements unless and until he has refiled it.

(2) Subject to the provisions of subsection (1) of this section the specification filed in pursuance of an application for a patent may be accepted by the Registrar General at any time after the applicant has complied with the requirements mentioned in that subsection, and if not so accepted within the period allowed under that subsection for compliance with those requirements, shall be accepted as soon as may be thereafter.

(3) On the acceptance of a specification the Registrar General shall give notice to the applicant, and shall advertise in the journal the fact that the specification has been accepted and the date on which the application and the specification filed in pursuance thereof will be open to public inspection.

(4) Any reference in this Act to the date of the publication of a specification shall be construed as a reference to the date advertised as aforesaid.

(5) After the date of publication of a specification and until the issue of a patent in respect thereof, the applicant shall have the like privileges and rights as if a patent for the invention had been issued on the date of the publication of the specification:

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

Grant of patent

12. (1) Subject to the provisions of this Act with respect to the powers of the Registrar General to refuse the grant it shall be lawful for the Registrar General, if the prescribed request is made within the time allowed under this section, to direct the issue of a patent in the prescribed form to the applicant or applicants therefor within that period of time or as soon thereafter as may be; and the date on which the patent is issued shall be entered in the Register of Patents.

(2) A request under this section for the issue of a patent shall be accompanied by the prescribed fee and shall be made not later than the expiration of four months from the date of the publication of the specification:

Provided that —

- (a) where the applicant or one of the applicants has died before the expiration of the time within which under the provisions of this subsection the request could otherwise be made, the said request may be made at any time within twelve months after the date of death or at such later time as the Registrar General may allow; and
- (b) in any other case the period within which a request for the sealing of a patent may be made may be extended for a further period not exceeding three months if a request to that effect is made to the Registrar General and the prescribed fee paid on or before the date on which that further period expires.

Term of Patent

13. (1) Every patent shall be dated with the date of application: Date and term of patent

Provided that no proceeding shall be taken in respect of an infringement committed before the date of the publication of the specification.

(2) The date of every patent shall be entered in the Register of Patents.

(3) Except as otherwise provided by this Act the term of every patent shall be sixteen years from the date of the patent.

(4) If it is desired at the expiration of the fourth year from the date of a patent or of any succeeding year during the term of the patent to keep the patent in force, the prescribed renewal fee shall be paid by filing the prescribed form before the expiration of that year.

(5) A patent shall cease to have effect notwithstanding anything therein or in this Act on the expiration of the period prescribed for the payment of any renewal fee if that fee is not paid within the prescribed period or within that period as extended under this section.

(6) The period prescribed for the payment of any renewal fee shall be extended to such period, not being more than six months longer than the prescribed period, as may be specified in a request made to the Registrar

General if the request is made and the renewal fee and any prescribed additional fee paid before the expiration of the period so specified.

Patent of
addition

14. (1) Subject to the provisions of this section where application is made for a patent in respect of any improvement in or modification of an invention (in this Act referred to as “the main invention”) and the applicant also applies or has applied for a patent for that invention or is the patentee in respect thereof the Registrar General may, if the applicant so requests, grant the patent for the improvement or modification as a patent of addition.

(2) Subject to the provisions of this section, where an invention being an improvement in or modification of another invention is the subject of an independent patent and the patentee of that patent is also the patentee in respect of the patent for the main invention, the Registrar General may, if the patentee so requests, by order revoke the patent for the improvement or modification and grant to the patentee a patent of addition in respect thereof, bearing the same date as the date of the patent so revoked.

(3) A patent shall not be granted as a patent of addition unless the date of filing of the specification was the same as or later than the date of filing of the specification in respect of the main invention.

(4) A patent of addition shall not be granted before the grant of the patent for the main invention.

(5) A patent of addition shall be granted for a term equal to that of the patent for the main invention, or so much thereof as is unexpired and shall remain in force during that term or until the previous cesser of the patent for the main invention and no longer:

Provided that if the patent for the main invention is revoked under this Act, the Court may order that the patent of addition shall become an independent patent for the remainder of the term of the patent for the main invention, and thereupon the patent shall continue in force as an independent patent accordingly.

(6) No renewal fees shall be payable in respect of a patent of addition; but, if any such patent becomes an independent patent by virtue of an order under subsection (5) of this section, the same fees shall thereafter be payable, upon the same dates, as if the patent had been originally granted as an independent patent.

(7) The validity of a patent of addition shall not be questioned on the ground that the invention ought to have been the subject of an independent patent.

(8) An appeal shall lie from any decision of the Registrar General under this section.

Restoration of Lapsed Patents and Patent Applications

15. (1) Where a patent has ceased to have effect by reason of a failure to pay any renewal fee within the prescribed period or within that period as extended under section 13 of this Act and the Registrar General is satisfied, upon application being made —

Restoration of
lapsed patents
18 *cf* 1975, s 4

- (a) within three years from the date on which the patent ceased to have effect; or
- (b) within six months from the twelfth day of September, 1975,

that the failure was unintentional and that no undue delay has occurred in the making or prosecution of the application, he shall by order restore the patent and any patent of addition specified in the application which has ceased to have effect on the cesser of the patent.

(2) An application under this section may be made by the person who was the patentee or by his personal representative, and where the patent was held by two or more persons jointly, the application may, with the leave of the Registrar General, be made by one or more of them without joining the others.

(3) An application under this section shall contain a statement (to be verified in such manner as may be prescribed) fully setting out the circumstances which led to the failure to pay the renewal fee; and the Registrar General may require from the applicant such further evidence as he may think necessary.

(4) If after hearing the applicant (if the applicant so required or the Registrar General thinks fit) the Registrar General is satisfied that a *prima facie* case has been made out for an order under this section, he shall advertise the application in the journal; and within the prescribed period any person may give notice to the Registrar General or opposition thereto on either or both of the following grounds —

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- (a) that the failure to pay the renewal fee was not unintentional; or
 - (b) that there has been undue delay in the making of the application.

(5) If notice of opposition is given within the period aforesaid, the Registrar General shall notify the applicant, and shall give to him and to the opponent an opportunity to be heard before he decides the case.

(6) If no notice of opposition is given within the period aforesaid or if, in the case of opposition, the decision of the Registrar General is in favour of the applicant, the Registrar General shall upon payment of any unpaid renewal fee and such additional fee as may be prescribed, make the order in accordance with the application.

(7) An order under this section for the restoration of a patent —

- (a) may be made subject to such conditions as the Registrar General thinks fit, including in particular a condition requiring the registration in the Register of Patents of any matter in respect of which the provisions of this Act as to entries in that register have not been complied with; and
- (b) shall contain such provision as may be prescribed for the protection of persons who may have begun to avail themselves of the patented invention between the date when the patent ceased to have effect and the date of the application under this section,

and if any condition of an order under this section is not complied with by the patentee, the Registrar General may, after giving to the patentee an opportunity to be heard, revoke the order and give such directions consequential on the revocation as he thinks fit.

(8) An appeal shall lie from any decision of the Registrar General under this section.

16. (1) Where a patent has not been sealed by reason only that the prescribed request was not made within the time allowed for that purpose by or under section 12(2), then, if the Registrar General is satisfied, upon application made by the applicant for the patent —

Restoration of
lapsed applica-
tions for patents
18 *cf* 1975, s 4

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- (a) within six months after the expiration of that time; or
 - (b) within six months from the twelfth day of September, 1975,

that the failure to make the request was unintentional, the Registrar General may order the patent to be sealed.

(2) An application under this section shall contain a statement (to be verified in such manner as may be prescribed) fully setting out the circumstances which led to the failure to make the prescribed request; and the Registrar General may require from the applicant such further evidence as he may think necessary.

(3) If after hearing the applicant (if the applicant so requires or the Registrar General thinks fit) the Registrar General is satisfied that a *prima facie* case has been made out for an order under this section, he shall advertise the application in the journal; and within the prescribed period any person may give notice to the Registrar General of opposition thereto on the ground that the failure to make the prescribed request was not unintentional.

(4) If notice of opposition is given within the period aforesaid, the Registrar General shall notify the applicant and shall give to him and to the opponent an opportunity to be heard before he decides the case.

(5) If no notice of opposition is given within the period aforesaid, or if in the case of opposition the decision of the Registrar General is in favour of the applicant, the Registrar General shall, upon payment of the fee prescribed in respect of the making of the request for sealing and of such additional fee as may be prescribed, make the order in accordance with the application.

(6) An order under this section for the sealing of a patent shall contain such provision as may be prescribed for the protection of persons who may have begun to avail themselves of the invention between the date when the time allowed by or under section 12(2) for making the prescribed request expired and the date of the application under this section.

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

Amendment of Specification

Amendment of
specification
with leave of the
court

17. (1) In any action for infringement of a patent or any proceeding before the Court for the revocation of a patent, the Court may, subject to the provisions of section 18 of this Act, by order allow the patentee to amend his specification in such manner, and subject to such terms as to costs, advertisements or otherwise, as the Court may think fit, and if in any such proceedings for revocation the Court decides that the patent is invalid, the Court may allow the specification to be amended under this section instead of revoking the patent.

(2) Where an application under this section is made to the Court, the applicant shall give notice of the application to the Registrar General and the Registrar General shall be entitled to appear and be heard, and shall appear if so directed by the Court.

Supplementary
provisions as to
amendment

18. (1) After the acceptance of a specification, no amendment thereof shall be effected except by way of disclaimer, correction or explanation and no amendment thereof shall be allowed, except for the purpose of correcting an obvious mistake, the effect of which would be that the specification as amended would claim or describe matter not in substance disclosed in the specification before the amendments, or that any claim of the specification as amended would not fall wholly within the scope of a claim of the specification before the amendment.

(2) Where any amendment of a specification is allowed by the Court under this Act the right of the patentee to make the amendment shall not be called in question except on the ground of fraud; and the amendment shall in all courts and for all purposes be deemed to form part of the specification:

Provided that in construing the specification as amended reference may be made to the specification as originally published.

(3) Where any amendment of a specification is allowed as aforesaid, the fact that the specification has been amended shall be advertised in the journal.

Rights Conferred by the Patent

19. (1) Subject to this Part of this Act a patentee shall have the sole and exclusive right to make, use, exercise and vend the invention, the subject of his patent and to authorise others so to do.

Nature of rights conferred by patent

(2) Infringements of patent rights shall be actionable at the suit of the patentee and in any proceedings for such an infringement all such relief by way of damages, injunction, account or otherwise shall be available as are available in like proceedings for the infringement of a patent under the law of England.

(3) In proceedings for the infringement of a patent damages shall not be awarded against a defendant who proves that at the date of the infringement he was not aware and had no reasonable ground for supposing that the patent existed.

(4) The exclusive right conferred on a patentee by subsection (1) shall not be deemed to be infringed by any of the following —

24 *cf* 1994, s 2

- (a) where the invention is a product or a substance, importation, use and sale of the product or substance when intended either for export or for use in the production of another product or substance intended for export;
- (b) where the invention is a process, use of the process to make a product or a substance, or the importation of a product or substance made using the process and the use and sale of that product or substance when intended for export or for use in the production of another product or substance intended for export.

*Revocation and Surrender *cf* Patents*

20. (1) Subject to the provisions of this Act a patent may, on the application of any person interested, be revoked by the Court on any of the following grounds, that is to say —

Revocation of patent by Court

- (a) that the patent was granted on the application of a person not entitled under the provisions of this Act to apply therefor;

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- (b) that the patent was obtained in contravention of the rights of the applicant or any person under or through whom he claims;
 - (c) that the subject of any claim of the specification is not an invention within the meaning of this Act;
 - (d) that the invention so far as claimed in any claim of the specification formed part of the state of the art as it existed before the priority date of the claim;
 - (e) that the invention so far as claimed in any claim of the specification was disclosed in another specification published under this Act on or after the priority date of the claim in pursuance of an application for a patent in The Bahamas, the relevant matter disclosed in the other specification having an earlier priority date;
 - (f) that the invention so far as claimed in any claim of the specification was obvious having regard to the state of the art as it existed before the priority date of the claim, or having regard to matter disclosed in the manner specified in paragraph (e) of this subsection;
 - (g) that the invention so far as claimed in any claim of the specification is not useful;
 - (h) that the specification does not sufficiently and fairly describe the invention and the method by which it is to be performed or does not disclose the best method of performing it which was known to the applicant for the patent (or his predecessor in title) at the relevant priority date and for which he was entitled to claim protection;
 - (i) that the scope of any claim of the specification is not sufficiently and clearly defined or that any claim of the specification is not fairly based on the matter disclosed in the specification;
 - (j) that the patent was obtained on a false suggestion or representation.
- (2) For the purposes of paragraph (e) of subsection (1) of this section the priority date of the matter disclosed in the other specification shall be, as regards claims, the date to which the claims are entitled under section 8 of this Act, and as regards descriptive matter, the date of filing of the

specification containing the said matter, or in a case where the specification is entitled to convention priority, the date on which the application for protection disclosing such matter was made in the convention country.

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

21. (1) A patentee may at any time make an application to the Registrar General offering to surrender his patent.

Surrender of
patent
18 cf 1975, s 6

(2) If any licence is registered at the Industrial Property Office in respect of a patent which the patentee has offered to surrender under the provisions of subsection (1) of this section, then the said application must be consented to by the registered licensee.

(3) If no licence is registered at the Industrial Property Office or if the offer to surrender under subsection (1) hereof is accompanied by a consent in writing from the licensee, then the surrender shall be accepted forthwith by the Registrar General who shall by order revoke the patent.

Obtaining of Inventions

22. (1) Subject as hereinafter provided, an invention claimed in a specification shall not be deemed to have been made part of the state of the art by reason only that the invention was published before the priority date of the relevant claim of the specification, in the following circumstances —

Published
invention not
deemed to be
part of state of
the art in certain
circumstances

- (a) the matter published was obtained from the patentee or applicant for the patent or (where he is not himself the true and first inventor) from any person from whom he derives title, and was published without his consent or the consent of any such person; and
- (b) if the patentee or applicant for the patent or any person from who he derives title learned of the publication before the priority date of the relevant claim, the application or the application in a convention country as the case may be, was made as soon as reasonably practicable thereafter.

(2) Where a specification is filed in pursuance of an application for a patent made by a person being the true and first inventor or deriving title from him, a claim in respect of an invention in that specification shall not be rendered invalid by reason only of any other application or claim in respect of the same invention made in contravention of the rights of that person, or by reason only that after the date of filing of that other application the invention was used or published, without the consent of that person, by the applicant in respect of that other application, or any other person in consequence of any disclosure of the invention by that applicant.

Revocation of
patent where
invention
unlawfully
obtained

23. (1) Where the invention the subject of a patent application or a part thereof has been obtained from any other person or from a person of whom that other person is the personal representative the person aggrieved by such unlawful obtaining may apply to the Registrar General for an order that the patent be revoked.

(2) Where an application is made for a patent for an invention which has been claimed in a specification filed in pursuance of any other such application, then, if a patent granted in pursuance of that other application has been revoked by the Court or the Registrar General on the ground specified in paragraph (b) of subsection (1) of section 20 or subsection (1) of this section, the Registrar General may direct that the first mentioned application and any specification filed in pursuance thereof shall be deemed, for the purposes of the provisions of this Act relating to the priority date of claims of specifications, to have been filed on the date on which the corresponding document was or was deemed to have been filed in the proceedings upon the said other application.

(3) An application to the Registrar General under subsection (1) of this section shall be made in the prescribed form and the Registrar General shall give notice of the application for revocation to the applicant for the patent and shall give to the applicant for the patent and the applicant for revocation an opportunity to be heard before he decides on the case.

(4) An appeal shall lie from any decision of the Registrar General under this section.

Co-ownership of Patents

24. (1) Where after the commencement of this Act a patent is granted to two or more persons, each of those persons shall, unless an agreement to the contrary is in force, be entitled to an equal undivided share in the patent. Co-ownership of patents

(2) Subject to the provisions of this section, where two or more persons are registered as grantee or proprietor of a patent, then, unless an agreement to the contrary is in force, each of those persons shall be entitled, by himself or his agents, to make use, exercise and vend the patented invention for his own benefit without accounting to the other or others.

(3) Subject to the provisions of this section, and to any agreement for the time being in force, a licence under a patent shall not be granted and a share in a patent shall not be assigned except with the consent of all persons, other than the licensor or assignor, who are registered as grantee or proprietor of the patent.

(4) Where an article is sold by one of two or more persons registered as grantee or proprietor of a patent the purchaser and any person claiming through him shall be entitled to deal with it in the same manner as if the article had been sold by a sole patentee.

(5) Where two or more persons are registered as grantee or proprietor of a patent the Registrar General may, upon application made to him by any of those persons and after giving to the other persons so registered an opportunity of being heard, give such directions in accordance with the application as to the sale or lease of the patent or any interest therein, the grant of licences under the patent or the exercise of any right under this section in relation thereto as he thinks fit.

(6) If any person registered as grantee or proprietor of the patent fails to execute any instrument or to do any other thing required for the carrying out of any direction given under this section within fourteen days after being requested in writing so to do by any of the other persons so registered, the Registrar General may, upon application made to him by any such other person, give directions empowering any person to execute that instrument or to do that thing in the name and on behalf of the person in default.

(7) 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 their rights or obligations as such.

Proceedings for Infringements, etc.

Proceedings for
infringement by
exclusive
licensee

25. (1) Subject to the provisions of this section, the holder of an exclusive licence under a patent shall have the like right as the patentee to take proceedings in respect of any infringement of the patent committed after the date of the licence, and in awarding damages or granting any other relief in such proceedings, the Court shall take into consideration any loss suffered or likely to be suffered by the exclusive licensee as such or, as the case may be, the profits earned by means of the infringement so far as it constitutes an infringement of the rights of the exclusive licensee as such.

(2) In any proceedings taken by the holder of an exclusive licence by virtue of this section the patentee shall, unless he is joined as a plaintiff in the proceedings, be added as defendant:

Provided that a patentee so added as defendant shall not be liable for any costs unless he takes part in the proceedings.

Remedy for
groundless
threats of
infringement
proceedings

26. (1) Where any person (whether entitled to or interested in a patent or an application for a patent or not) by circulars, advertisements or otherwise threatens any other person with proceedings for infringement of a patent, any person aggrieved thereby may bring an action against him for any such relief as is mentioned in subsection (2) of this section.

(2) Unless in any action brought by virtue of this section the defendant proves that the acts in respect of which proceedings were threatened constitute, or, if done, would constitute an infringement of a patent, the plaintiff shall be entitled to the following relief that is to say —

- (a) a declaration to the effect that the threats are unjustifiable;
- (b) an injunction against the continuance of the threats; and

(c) such damages, if any, as he has sustained thereby.

(3) For the avoidance of doubt it is hereby declared that a mere notification of the existence of a patent does not constitute a threat of proceedings within the meaning of this section.

International Agreements, etc.

27. (1) Where a person has applied for protection for an invention by an application which —

Certain applications abroad equivalent to regular local applications

- (a) in accordance with the terms of a treaty subsisting between any two or more convention countries is equivalent to an application duly made in any one of those convention countries; or
- (b) in accordance with the law of any convention country is equivalent to an application duly made in that convention country,

he shall be deemed for the purposes of this Act to have applied in that convention country.

(2) For the purposes of this Act, matter shall be deemed to have been disclosed in an application for protection in a convention country if it was claimed or disclosed (otherwise than by way of disclaimer or acknowledgement of prior art) in that application or in documents submitted by the applicant for protection in support of and at the same time as the application, but no account shall be taken of any disclosure effected by any such document unless a copy of the document is filed at the Industrial Property Office with the convention application or within such period as may be prescribed after the filing of that application.

18 cf 1975, s 6

28. Where a vessel or aircraft registered in a convention country or a land vehicle owned by a person ordinarily resident in such a country comes into The Bahamas (including the territorial waters thereof temporarily or accidentally only, the rights conferred by a patent for an invention shall not be deemed to be infringed by the use of the invention —

Certain uses of invention not deemed to be infringement

- (a) in the body of the vessel or in the machinery, tackle, apparatus or other accessories thereof so far as the invention is used on board the vessel and for its actual needs only; or
- (b) in the construction or working of the aircraft or land vehicle or of the accessories thereof, as the case may be.

Register of Patents

Register of
Patents
18 *cf* 1975, s 6

29. (1) There shall be kept at the Industrial Property Office a book called the Register of Patents in which there shall be entered particulars of patents in force, the assignments and transmissions of patents and of licences under patents and notices of all matters which are required by or under this Act to be entered in the register and of such other matters affecting the validity or proprietorship of patents as the Registrar General thinks fit.

(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.

**PART III
DESIGNS**

Provision for the Creation of Design Copyright

Design
copyright

30. (1) In this Act the expression “design” shall mean features of shape, configuration, pattern or ornament of an article or features of pattern or ornament applicable to articles in so far as such features appeal to and are judged solely by the eye.

18 *cf* 1975, s 6

(2) Subject to the provisions of this Act, design copyright shall be obtainable in every original design by the person claiming to be the proprietor thereof by depositing a claim for design copyright at the Industrial Property Office.

31. (1) A design shall be deemed to be original in so far only as it is the original work of the author. Originality of designs

(2) Subject to the right of priority provided for by section 63 of this Act, a design shall not be deemed to be original if it is the same as a design of or for the same or any other article by the same author which has been previously published in The Bahamas or elsewhere or has been deposited under this Act by or on behalf of or with the consent of the author or any proprietor thereof or differs from such design in modifications or variations not sufficient to alter the character or substantially affect the identity thereof.

32. (1) Subject to the provisions of this section, the author of a design shall be treated for the purposes of this Act as the proprietor of the design. Proprietorship of designs

Provided that where the design is executed by the author for another person for good consideration that other person shall be treated for the purposes of this Act as the proprietor.

(2) Where a design or the right to apply a design to any article becomes vested, whether by assignment, transmission or operation of law, in any person other than the original proprietor either alone or jointly with the original proprietor, that other person or, as the case may be, that other person and the proprietor shall be treated for the purposes of this Act as the proprietor of the design in relation to that article.

33. (1) Every claim for design copyright in a design shall be accompanied by a representation or, at the Registrar General's option, a specimen of the design and shall include the following information — Proceedings for deposit

- (a) the name and address of the proprietor;
- (b) the name of the article which is the subject of the design or the article to which the design is to be applied;
- (c) a statement of originality referring to the representation or specimen and indicating whether copyright is claimed in the whole or part of the design shown in the representation or specimen and if in part, indicating which part or parts, and also whether copyright is claimed in shape, configuration, pattern or ornament.

(2) Design copyright in a design shall date from the date of the deposit of the claim to copyright under this Act.

Provision for
prior disclosures
at certified
exhibitions

34. Design copyright in a design shall not be invalidated by reason only —

- (a) that a representation of the design, or any article to which the design has been applied, has been displayed, with the consent of the proprietor of the design, at an exhibition certified by the Registrar General for the purposes of this subsection;
- (b) that after any such display as aforesaid, and during the period of the exhibition, a representation of the design or any such article as aforesaid has been displayed by any person without the consent of the proprietor; or
- (c) that a representation of the design has been published in consequence of any such display as is mentioned in paragraph (a) of this section,

if the claim for design copyright is deposited not later than six months after the opening of the exhibition.

Effect of Registration, etc.

Right given by
registration

35. (1) Design copyright in a design is infringed by any person who, without the consent of the proprietor —

- (a) by copying the design directly or indirectly, makes in The Bahamas according to the design, or a design not substantially different therefrom, an article for which the design is deposited or applies the design, or a design not substantially different therefrom, to an article for which the design is deposited;
- (b) imports for sale or for use for the purposes of any trade or business, sells, hires, offers or exposes for sale an article in The Bahamas, if to his knowledge the article was produced or had a design applied to it, in infringement of the design copyright or would have been so produced or had a design so applied, if the production or application had taken place in The Bahamas.

(2) Design copyright shall give no rights in any features of an article in so far as these are dictated solely by the function which the article is intended to perform or in any method or principle of construction.

36. (1) Design copyright in a design shall, subject to the provisions of this Act, subsist for a period of five years from the date of deposit.

Period of
copyright.

(2) The Registrar General shall extend the period of copyright for a second period of five years from the expiration of the original period and for a third period of five years from the expiration of the second period if an application for extension of the period of copyright for the second or third period is made before the expiration of the original period or the second period, as the case may be, and if the prescribed fee is paid before the expiration of the relevant period, or if such application is made and the said fee is paid within such further period (not exceeding six months) as may be specified in a request made to the Registrar General and accompanied by the prescribed additional fee.

37. In proceedings for the infringement of design copyright in a design damages shall not be awarded against a defendant who proves that at the date of the infringement he was not aware and had no reasonable ground for supposing that the design was the subject of design copyright.

Exemption of
innocent
infringes.

38. The Registrar General may, upon a request made by the proprietor, cancel the deposit of a claim to design copyright.

Cancellation of
registration by
Registrar
General.

39. (1) At any time after a claim to design copyright has been deposited, any person interested may apply to the Court for cancellation of the deposit on any one or more of the following grounds, that is to say —

Cancellation of
registration by
the Court.

- (a) that the deposit was obtained by or in the name of a person not entitled thereto;
- (b) that the design or a representation thereof was published before the priority date of the claim by, on behalf of, or with the consent of, any proprietor thereof;
- (c) that the design was not an original work in respect of the feature stated in the deposit to be original;

(d) that the design is the same as a design of, or for, the same or any other article by the same author which has been previously published or deposited by, on behalf of or with the consent of the author or any proprietor thereof, or differs from such design in modifications or variations not sufficient to alter the character or substantially affect the identity thereof.

(2) Where the deposit of a claim to design copyright has been cancelled by virtue of the provisions of section 38 or of subsection (1) of this section the said deposit shall be regarded for all purposes as never having been effected.

(3) Every ground on which a design may be cancelled under this section shall be available as a ground of defence in any proceeding for the infringement of the design copyright in a design.

(4) “Priority date of the claim” means the date of deposit of the claim under this Act or such earlier date as the proprietor may be entitled to under the provisions of section 63 of this Act.

Deposit List, etc.

Deposit List
18 *cf* 1975, s 6

40. (1) There shall be kept at the Industrial Property Office a Deposit List in which there shall be entered the names and addresses of the proprietors of designs, claims to which have been deposited under the provisions of this Act, notices of assignments and of transmissions of the design copyright in such designs and such other matters as the Registrar General may think fit.

(2) The Deposit List shall be *prima facie* evidence of any matters required or authorised by this Act to be entered therein.

Certificate of
deposit

41. The Registrar General shall grant a certificate of deposit in the prescribed form to the proprietor of a design when the claim to design copyright is deposited.

Inspection of
deposited
designs
18 *cf* 1975, s 6

42. The representation or specimen of a design in respect of which a claim for design copyright has been deposited under this Act shall be open to inspection at the Industrial Property Office on and after the twenty-eighth day after the claim for design copyright has been deposited.

43. The provisions of this Act with regard to the remedy in the case of groundless threats of legal proceedings by a patentee shall apply *mutatis mutandis* in the case of designs the subject of design copyright in like manner as they apply in the case of patents.

Remedy in respect of groundless threats.

PART IV GENERAL PROVISIONS RELATING TO PATENTS AND DESIGNS

Industrial Property Department

44. (1) There shall be created for the purpose of this Act and the Trade Marks Act, an office of the Registrar General's Department, which shall be called, and is in this Act referred to as, the Industrial Property Office.

Industrial Property Office.
18 *cf* 1975, s 5
Ch. 322.

(2) The Industrial Property Office shall be under the immediate control of the Registrar General.

18 *cf* 1975, s 6

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

(4) There shall be a seal for the Industrial Property Office and impressions thereof shall be judicially noted and admitted in evidence.

18 *cf* 1975, s 6

45. (1) The Registrar General shall issue periodically as a supplement to the *Gazette* an official periodical journal containing the names of the proprietors of patents granted together with a brief description of the inventions patented and reproductions of trade marks registered under the provisions of the Trade Marks Act in the period to which the journal relates.

Publication of journal.

Ch. 322.

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

Fees

46. There shall be paid in respect of the grant of patents and the deposit 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.

Fees.

*Provisions as to Register, Deposit List and other Documents
in Industrial Property Office*

Trusts not to be entered in register or deposit list.

47. There shall not be entered in any register or list kept under this Act or be receivable by the Registrar General any notice of any trust expressed, implied or constructive.

Inspection of extracts from registers and lists.
18 cf 1975, s 6

48. Every register and list kept under this Act shall at all convenient times be open to the inspection of the public subject to the provisions of this Act; and certified copies sealed with the seal of the Industrial Property Office of any entry in any such register or list shall be given to any person requiring the same on payment of the prescribed fee.

Power of Registrar General to correct clerical errors.
18 cf 1975, s 6

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

- (a) correct any clerical error in or in connection with any application for a patent or in any patent or any specification;
- (b) correct any clerical error in a claim for design copyright 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 deposit list of designs:

Provided that where a request is made for a correction under paragraph (a) of this section and it appears to the Registrar General 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 Industrial Property Office of opposition to the request, and where any such notice is given, the Registrar General 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.

Registration of assignments, etc.

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

application to the Registrar General in the prescribed manner to register his title and the Registrar General 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 in the Register of Patents or Deposit List of designs, as the case may be, 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 General in the prescribed manner to register his title and the Registrar General 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 the Deposit List of designs as the case may be with particulars of the instrument, if any, creating such interest.

(3) The person registered as proprietor of a patent or design shall subject to the provisions of this Act and to any rights appearing from the register or Deposit List 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 51 of this Act, a document or instrument in respect of which no entry has been made in the register or Deposit List as the case may be in accordance with subsections (1) and (2) of this section shall not be admitted in evidence in any court in proof of the title to a patent or design copyright in a design or to any interest therein unless the court otherwise directs.

51. (1) The Court may on application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the Register of Patents or the Deposit List of designs of any entry or by any entry made in either the Register of Patents or the Deposit List of designs without sufficient cause or by any entry wrongly remaining on either such register or list or by an error or

Rectification by
Court of Register
of Patents and
Deposit List

defect in any entry in either such register or list, 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 or list.

(3) The prescribed notice of any application under this section shall be given to the Registrar General 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 the register or deposit list shall direct that notice of the rectification be served on the Registrar General in the prescribed manner; and the Registrar General shall on the receipt of the notice, rectify the register accordingly.

Evidence, etc.

Certificate of
Registrar General
to be evidence

52. (1) A certificate purporting to be signed by the Registrar General and certifying that any entry which he is authorised by or under this Act to make has or has not been made, or that any other thing which he is authorised to do has or has not been done, shall be *prima facie* evidence of the matters so certified.

18 cf 1975, s 6

(2) A copy of any entry in any register or list or of any document kept in the Industrial Property Office or of a patent or an extract from any such register, list or document, purporting to be certified by the Registrar General and to be sealed with the seal of the Industrial Property Office, shall be admitted in evidence without further proof and without production of the original.

Evidence before
Registrar
General

53. (1) In any proceedings under this Act before the Registrar General the evidence shall be given by affidavit in the absence of directions to the contrary but in any case in which he shall think right to do so the Registrar General make take evidence *viva voce* in lieu of or in addition to evidence by affidavit.

(2) In case any part of the evidence is taken *viva voce* the Registrar General shall in respect of requiring the attendance of witnesses and taking evidence on oath be in the same position in all respects as the Court.

Powers and Duties of Registrar General

54. Where any discretionary or other power is given to the Registrar General by this Act or rules made thereunder, he shall not exercise that power adversely to the applicant for a patent or the proprietor of a design without giving such applicant or proprietor an opportunity of being heard.

Exercise of discretionary power by Registrar General.

55. The Registrar General may, in any proceedings before him under this Act by order award to any party such costs as he may consider reasonable and direct how and by what parties they are to be paid; and any such order may by leave of the Court be enforced in the same manner as a judgment or order of the Court to the same effect.

Costs.

Agents for Patents

56. Where by this Act any act has to be done by or to any person in connection with a patent or application for a patent or claim to design copyright in a design or any procedure relating thereto, such act may under and in accordance with rules made under this Act or, in particular cases by special leave of the Registrar General, be done by or to an agent of such party duly authorised in the prescribed manner.

Recognition of agents.

Offences

57. (1) If any person makes or causes to be made a false entry in any register or list kept under this Act or a writing falsely purporting to be a copy of an entry in any such register or list or produces or tenders or causes to be produced or tendered in evidence any such entry 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 being the subject of the design copyright in a design he shall be liable for every offence on summary conviction to a fine not exceeding one hundred dollars.

5 cf 1987, s 2

Power of Minister to make Rules

Minister may
make rules
18 *cf* 1975, s 6

58. (1) Subject to the provisions of this Act the Minister may from time to time make such rules, prescribe such forms and generally do such things as may be thought expedient for regulating, the business of the Industrial Property Office in relation to patents and designs and for regulating all matters by this Act placed under the direction or control of the Registrar General and in particular without prejudice to the foregoing —

- (a) for prescribing the form of applications for patents and of specifications, drawings or other documents which may be filed at the Industrial Property Office and for requiring copies to be furnished of any such documents;
- (b) for prescribing the form of claims to design copyright in a design and of any representations thereof which may be filed at the Industrial Property Office;
- (c) for regulating the procedure to be followed in connection with any application or request to the Registrar General or in connection with any proceeding before the Registrar General and for authorising the rectification of irregularities of procedure;
- (d) for regulating the keeping of the register and deposit list provided for by this Act; and
- (e) for prescribing anything authorised or required by this Act to be prescribed by rules made by the Minister.

(2) Before making any rules under this section the Minister shall publish notice of the intention to make the rules and of the place where copies of the draft rules may be obtained in such manner as he may consider most expedient so as to enable persons affected to make representations to the Minister before the rules are finally settled.

(3) Any rules made in pursuance of this section shall be forthwith advertised in the journal.

Supplemental

59. Any notice required or authorised to be given by or under this Act and any application or other document so authorised or required to be made or filed, may be given, made or filed by post and shall be deemed to have been given, made or filed on the seventh day after the day on which the letter, envelope or wrapper containing the same was posted.

Notices etc. may be sent by post.

60. (1) Rules made by the Minister under this Act may specify the hour at which the Industrial Property Office shall be deemed to be closed on any day for purposes of the transaction by the public of business under this Act or any class of such business and may specify days as excluded days for any such purposes.

Business hours of Industrial Property Office. 18 *cf* 1975, s 6

(2) Any business done under this Act on any day after the hour specified as aforesaid in relation to business of that class or on a day which is an excluded day in relation to business of that class, shall be deemed to have been done on the next following day not being an excluded day; and where the time for doing anything under this Act expires on an excluded day, that time shall be extended to the next following day not being an excluded day.

Appeals

61. (1) Any appeal from the Registrar General under this Act shall lie to the Court and it shall be lawful for the Rules Committee under section 75 of the Supreme Court Act to make rules prescribing the procedure to be followed on appeals under this Act.

Appeals.

Ch. 53.

(2) Upon any appeal under this Act the Court may exercise any power which could have been exercised by the Registrar General in the proceeding from which the appeal is brought.

General International Arrangements

62. The Governor-General may with a view to the fulfilment of a treaty, convention, arrangement or engagement, by proclamation declare that any country specified in the proclamation is a convention country for the purposes of this Act:

Convention countries.

Provided that a declaration may be made as aforesaid for the purposes either of all or some only of the provisions of this Act, and a country in the case of which a declaration made for the purposes of some only of the provisions of this Act is in force shall be deemed to be a convention country for the purposes of those provisions only.

Convention provisions relating to designs and trade marks.

Ch. 322.

63. (1) Any person who has applied for protection for any design or trade mark in a convention country or his legal representative or assignee shall enjoy for the purposes of the deposit of a claim for design copyright in his design under this Act or for the purposes of an application for registration of his trade mark under the Trade Marks Act, a right of priority and his deposit or application shall accordingly have the same date as the date of application for protection in the convention country:

Provided that —

- (a) the deposit or application is made within six months from the date of deposit or application for protection in the convention country; and
- (b) nothing in this section shall entitle the proprietor of the design or trade mark to recover damages for infringement happening prior to the date on which his claim to design copyright is deposited or the date of registration of his trade mark in The Bahamas.

(2) The design copyright in a design or the registration of a trade mark shall not be invalidated —

- (a) in the case of a design, by reason of the publication of the design; or
- (b) in the case of a trade mark, by reason of the use of the trade mark,

during the period specified in this section as that within which the deposit or application may be made.

(3) The claim to design copyright in a design or the application for the registration of a trade mark under the provisions of this section shall be made in the same manner as an ordinary application under this Act or the Trade Marks Act and shall be accompanied by a request for convention priority together with such declaration as may be prescribed.

Ch. 322.

- (4) Where a person has applied for protection for any design or trade mark by a claim or application which —
- (a) in accordance with the terms of a treaty subsisting between two or more convention countries, is equivalent to an application duly made in that convention country; or
 - (b) in accordance with the law of any convention country, is equivalent to an application duly made in that convention country,

he shall be deemed for the purposes of this section to have applied in that convention country.

64. (1) Notwithstanding sections 8, 10 and 18 of the Trade Marks Act, a trade mark that the applicant or his predecessor in title has caused to be duly registered in his country of origin shall be registrable under that Act in The Bahamas unless —

- (a) it is of such a nature as to infringe rights acquired by other parties in The Bahamas;
- (b) it is without distinctive character or consists exclusively of signs or indications which serve in trade to designate the kind, quality, quantity, intended purpose, value, place of origin of the goods or time of production or which have become customary in the current language or in the *bona fide* and established practices of the trade in The Bahamas;
- (c) it is contrary to morality or public order or of such a nature as to deceive the public;
- (d) it is a trade mark whose registration is prohibited by rules made under section 65 of this Act.

(2) A trade mark that differs from the trade mark registered in the country of origin only by elements that do not alter its distinctive character or affect its identity in the form in which it is registered in the country of origin shall be regarded for the purposes of subsection (1) of this section as being the trade mark so registered.

(3) For the purposes of this section “country of origin” means —

- (a) the convention country in which the applicant for registration of a trade mark had at the date of application a real and effective industrial or commercial establishment; or

Trade marks first
registered
elsewhere
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- (b) if the applicant did not at the date of the application have in a convention country an establishment as described in subparagraph (a) of this subsection, the convention country where he on that date has his domicile; or
- (c) if the applicant did not at the date of the application have in a convention country an establishment as described in subparagraph (a) of this subsection, or a domicile as described in subparagraph (b) of this subsection, the convention country of which he was on that date a citizen or national.

Unregistrable
trade marks

65. Provision shall be made by the rules relating to the registration of trade marks for the refusal of any application for the registration of a trade mark which consists of or contains as an element thereof any national, territorial or civil flag, arms, crest or emblem, any official control or guarantee sign, stamp or hallmark, or any armorial bearing, flag or other emblem, abbreviation or title of any international intergovernmental organisation to which one or more convention countries belong notice of objection to the use of which as a commercial device has been received pursuant to the provisions of any international convention relating to industrial property to which The Bahamas adheres and publicly given by the Registrar General:

Provided that the refusal of any application for the registration of a trade mark containing any official control or guarantee sign, stamp or hallmark shall apply solely in cases where the mark is intended to be used on goods of the same or a similar kind.

PART V FALSE TRADE DESCRIPTIONS

Offences as to
trade
descriptions

66. (1) Every person who applies any false trade description to goods or causes such a description to be so applied shall, subject to the following provisions of this Act and unless he proves that he acted without intent to defraud, be guilty of an offence against this Act.

(2) Every person who sells or exposes for, or has in his possession for, sale, or any purposes of trade or manufacture any goods or things to which any false trade description is applied, shall, unless he proves either —

- (a) that having taken all reasonable precautions against committing an offence against the provisions of this Part of this Act, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade description, and that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such goods or things; or
- (b) that otherwise he had acted innocently,

be guilty of an offence against this Act.

(3) Any person guilty of an offence against this Act shall be liable on summary conviction to a penalty not exceeding four hundred dollars and in the case of a second or subsequent conviction to a penalty not exceeding one thousand dollars and in any case to the forfeiture of all goods in respect of which the offence was committed. *5 cf 1987, s 2*

67. (1) For the purposes of this Part of this Act the expression “trade description” means any description, statement or other indication direct or indirect — Interpretation

- (a) as to the number or quantity, measure, gauge or weight of any goods; or
- (b) as to the standard of quality of any goods, according to a classification commonly used or recognised in the trade; or
- (c) as to the fitness for purpose, strength, performance or behaviour of any goods; or
- (d) as to the place or country in which any goods were made or produced; or
- (e) as to the mode of manufacturing or producing any goods; or
- (f) as to the material of which any goods are composed; or
- (g) as to any goods being the subject of an existing patent, privilege or copyright,

and the use of any figure, word or mark which, according to the custom of the trade is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Act;

“false trade description” means a trade description which is false or misleading in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description false or misleading in a material respect and the fact that a trade description is a trade mark whether registered or not, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Act.

The customs entry relating to imported goods shall be deemed to be a trade description applied to the goods.

(2) Without prejudice to the generality of the definitions of “trade description” and “false trade description” set out in subsection (1) of this section, a trade description (to whichever of the matters mentioned in the definition of trade description it relates) shall be deemed for the purposes of this Part of this Act to be a false trade description if it is calculated to be misunderstood as, or mistaken for, an indication as to the same or some other such matter which would be false or misleading in a material respect as regards the goods to which the description is applied and anything calculated to be misunderstood as, or mistaken for, an indication of any of those matters shall be deemed for those purposes to be a trade description.

(3) Where at the commencement of this Act, a trade description is lawfully and generally applied to goods of a particular class or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Act with respect to false trade descriptions shall not apply to such trade description when so applied:

Provided that where such trade description includes the name of a place or country and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this subsection shall not apply unless there is added to the trade description immediately before or after the name of the place or country, in an equally conspicuous manner, with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

68. The provisions of this Act respecting the application of a false trade description to goods shall extend to the application to goods of any such figures, words or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

Extension of provisions relating to the application of false trade descriptions

69. (1) A person shall be deemed to apply a trade description to goods who —

Applying trade descriptions

- (a) applies it to the goods themselves; or
- (b) applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade or manufacture; or
- (c) places, encloses or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade or manufacture in, with, or to any covering, label, reel or other thing to which a trade description has been applied; or
- (d) uses a trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are described by that trade description.

(2) The expression “covering” includes any stopper, cork, bottle, vessel, box, cover, capsule, case, frame or wrapper; and the expression “label” includes any band or ticket.

(3) A trade description shall be deemed to be applied whether it is woven, impressed or otherwise worked into, or annexed or affixed to the goods or to any covering, label, reel or other thing.

70. Where a defendant is charged with applying to goods any false trade description, or causing any such description to be applied, and proves —

Exemption of certain persons employed in ordinary course of business

- (a) that in the ordinary course of his business he is employed on behalf of other persons to apply descriptions to goods and that in the case which is the subject of the charge he was so employed by some person resident in The Bahamas and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and

- (b) that he took reasonable precautions against committing the offence charged; and
- (c) that he had, at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade description; and
- (d) that he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade description was applied,

he shall be discharged from the prosecution but shall be liable to pay the costs incurred by the prosecutor unless he has given due notice to him that he will rely on the above defence.

Limitation of prosecution.

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71. No prosecution for an offence against the provisions of this Part of this Act or the provisions of Part III of the Trade Marks Act shall be commenced after the expiration of three years next after the commission of the offence or one year next after the first discovery thereof by the prosecutor, whichever expiration first happens.

Servant not liable to prosecution in certain circumstances.

72. Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in The Bahamas who *bona fide* acts in obedience to the instructions of such master, and on demand made by or on behalf of the prosecutor, has given full information as to his master.

PART VI

REPEALS AND TRANSITIONAL PROVISIONS

Repeal and transitional provisions.
23 cf 1889
Ch. 2.

73. (1) Subject to the provisions of this section, the Patent Act as amended is hereby repealed.

(2) Without prejudice to the provisions of the Interpretation Act as amended, with respect to repeals, the transitional provisions set out in the Schedule to this Act shall have effect for the purposes of the transition to the provisions of this Act from the law in force before the commencement of this Act.

SCHEDULE**TRANSITIONAL PROVISIONS**

1. Subject to the provisions of this Schedule any proclamation, rule, order, requirement, certificate, notice, decision, direction, authorisation, consent, application, request or thing made, issued, given or done under any enactment repealed by this Act, shall, if in force at the commencement of this Act, and so far as it could have been made, issued, given or done under this Act, continue in force and have effect as if made, issued, given or done under the corresponding provisions of this Act.

2. Section 8 of this Act shall apply in relation to a complete specification filed before the commencement of this Act as it applies to a specification filed after the commencement of this Act.

3. The provisions of section 23 of this Act shall apply in relation to any application for a patent made before the commencement of this Act as they apply in relation to such an application made after the commencement of this Act.

4. Where two or more persons are registered as grantee or proprietor in respect of a patent which was granted or for which application was made before the commencement of this Act, the right of each of those persons to assign the whole or part of his interest in the patent shall not be restricted by reason only of the provisions of section 24 of this Act.

5. Subsections (1) and (3) of section 13 of this Act shall not apply to any patent granted before the commencement of this Act.

6. Subsection (1) of section 14 of this Act shall apply in relation to any application made before the commencement of this Act as it applies in relation to an application made after the commencement of this Act.

7. Section 25 of this Act shall not apply in relation to any infringement of a patent committed before the commencement of this Act.

8. Any register kept under the Patent Act shall be deemed to form part of the corresponding register under this Act.

9. Any document referring to any enactment repealed by this Act shall be construed as referring to the corresponding enactment of this Act.

10. Any reference in this Schedule to the Patent Act shall be construed as a reference to that Act as amended by any subsequent enactment.