

PATENTS ACT

CHAPTER 82:76

Act

21 of 1996

Amended by

*5 of 1999 (By implication)

18 of 2000

54 of 2000

*See Note on page 2

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(Validation of applications filed under the Patent Co-operation Treaty)

See Patents (Validation of International Applications filed under the Patent Co-operation Treaty), (No. 2) Act 1999 (Act No. 5 of 1999) for validating the effect of certain international applications under the said Treaty designating Trinidad and Tobago filed between 10th March, 1994 and 1st December 1997.

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CHAPTER 82:76

PATENTS ACT

21 of 1996. **An Act to make provision in respect of future patents and applications for patents, for the protection of inventions, to give effect to certain international conventions on patents and for connected purposes.**

Commencement.
253/1997.

[1ST DECEMBER 1997]

PART I

PRELIMINARY

Short title. **1.** This Act may be cited as the Patents Act.

Interpretation. **2.** In this Act—
“appointed day” in any Part or section of this Act, means the day appointed under section 1(2) for the coming into operation of that Part or section;
“Controller” means the Controller of the Intellectual Property Office appointed under section 3(2) and any reference to the Controller shall be construed as including a reference to any officer discharging the functions of the Controller;
“Court” means the High Court;
“date of filing” means—
(a) in relation to an application for a patent made under this Act, the date which is the date of filing that application under section 19; and
(b) in relation to any other application, the date which, under the law of the country where the application was made or in accordance with the terms of a treaty or convention to which that country is a party, is to be treated as the date of filing the application or is equivalent to the date of filing an application in that country (regardless of the outcome of the application) by virtue of section 20;

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- “Examiner” means any person or body appointed or designated as such by the Minister under section 5;
- “exclusive licence” means a licence from the proprietor or applicant for a patent which confers on the licensee, or on the licensee and persons authorised by him, to the exclusion of all other persons, (including the proprietor or the applicant), any right in respect of the invention to which the patent or application relates and “exclusive licensee” and “non-exclusive licence” shall be construed accordingly;
- “formal requirements” means those requirements designated as such by rules made for the purposes of section 23;
- “Intellectual Property Office” means the Intellectual Property Office referred to in section 3(1);
- “international application for a patent” means an application made under the Patent Co-operation Treaty;
- “International Bureau” means the Secretariat of the World Intellectual Property Organisation established by the convention signed at Stockholm on the 14th day of July, 1967;
- “invention” means an idea of an inventor which permits in practice the solution to a specific problem in the field of technology;
- “inventor” means the actual deviser of an invention and “joint inventor” shall be construed accordingly;
- “Minister” means the Minister to whom is assigned responsibility for patents;
- “Paris Convention” means the Paris Convention for the Protection of Industrial Property signed in Paris on the 20th day of March, 1883 as amended from time to time and as in force in Trinidad and Tobago;
- “patent” means the title granted to protect an invention and unless the context otherwise requires includes, subject to Part XV, a utility certificate;
- “patent application” means an application under this Act for a patent and unless the context otherwise requires includes, subject to Part XV, a utility certificate application;
- “Patent Co-operation Treaty” means the treaty of that name signed at Washington on the 19th day of June, 1970;

- “patented invention” means an invention for which a patent is granted and “patented process” shall be construed accordingly;
- “patented product” means a product which is a patented invention or, in relation to a patented process, a product obtained directly by means of the process or to which the process has been applied;
- “periodical” includes the *Gazette*, daily newspapers circulating in Trinidad and Tobago or other publication issued by the Intellectual Property Office;
- “prescribed” means, in the case of proceedings before the Court, prescribed by Rules of Court, and, in any other case, prescribed by Rules made under this Act;
- “priority date” means the date determined as such under section 20;
- “published” means made available to the public and a document shall be taken to be published if a reproduction thereof can be inspected as of right by members of the public whether on payment of a fee or not;
- “register” means the register of patents referred to in section 34;
- “right” in relation to any patent application or patent includes an interest in the patent application or patent and, without prejudice to the foregoing, any reference in this Act to a right in a patent includes a reference to a share in the patent;
- “utility certificate”, unless the context otherwise requires, means a utility certificate under Part XV.

PART II

INTELLECTUAL PROPERTY OFFICE

Intellectual property office.

3. (1) There shall be an office to be known as the Intellectual Property Office.

Controller and his staff.

(2) There shall be a Controller in charge of the Intellectual Property Office who shall have the responsibility for the administration of all laws relating to intellectual property, and who shall exercise the powers and perform the functions conferred by and under this Act, and by and under any law.

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(3) There shall be appointed such number of Deputy or Assistant Controllers and other officers as are considered necessary.

(4) The offices of the Controller, Deputy Controller and Assistant Controller are prescribed as public offices for the purposes of section 111(4) of the Constitution.

(5) The Controller shall have a seal of such device as may be approved by the Minister and impressions of such seal shall be judicially noticed and admitted in evidence.

(6) The Minister may issue to the Controller directions in writing, not inconsistent with the provisions of this Act, concerning the exercise and performance of his powers and functions in relation to any matter which appears to the Minister to concern the development of intellectual property and other matters connected therewith and the Controller shall give effect to any such directions.

(7) Subject to the provisions of this Act, the officers appointed under subsection (3) shall discharge, under the superintendence and direction of the Controller such functions under this Act as he may, from time to time, by general or special order in writing, direct them to discharge.

PART III

PATENTS

4. (1) For the purposes of this Act, the Controller shall be responsible for the grant and administration of patents and utility certificates, for the provision of patent information services, and for the promotion of inventiveness among citizens of Trinidad and Tobago.

Administration
of patents;
Information
Services.

(2) The patent information services, referred to in subsection (1), shall consist of the making available, in the manner prescribed for use by the public, and on payment of the prescribed fees, if any, of patent and relevant non-patent literature, including all domestic patent documents and such foreign patent documents as are available.

5. The Minister may appoint or designate such Examiners, as may be necessary, for exercising the powers conferred and performing the functions required by or under this Act.

Appointment of
Examiners

Restrictions on officers of Intellectual Property Office.

6. (1) No patent application may be filed by, no patent may be granted to, and no rights relating to patents may be held by officers and other employees of the Intellectual Property Office.

(2) No officer or other employee of the Intellectual Property Office shall, during his period of employment or thereafter, communicate information obtained as such officer or employee to a person not entitled to the information or make other use of such information for personal gain.

(3) An officer or other employee of the Intellectual Property Office who contravenes subsection (2) is liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for six months.

Exercise of discretionary power by Controller.

7. Where any discretionary power is by or under this Act given to the Controller, he shall not exercise that power adversely to any party in proceedings before him without giving that party an opportunity of being heard as regards such exercise.

PART IV

PATENTABILITY OF INVENTIONS

Patentable inventions.

8. Subject to section 12, a patent may be granted only for an invention in respect of which the following conditions are satisfied, that is to say:

- (a) the invention is new;
- (b) it involves an inventive step;
- (c) it is capable of industrial application,

and references in this Act to a patentable invention shall be construed accordingly.

Novelty.

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

(2) The state of the art in the case of an invention to which an application for a patent or a patent relates shall be taken to comprise all matter (whether a product, a process, information about either, or anything else) which has at any time before the priority date of that invention been made available to the public (whether in Trinidad and Tobago or elsewhere) by written or oral description, by use or in any other way.

(3) For the purposes of this section, the disclosure of matter constituting an invention under subsection (2) shall not be taken into consideration if such disclosure occurred not more than one year immediately preceding the date of filing the patent application and the disclosure was due to or in consequence of—

- (a) acts committed by the applicant or his predecessor in title; or
- (b) an abuse committed by a third party with regard to the applicant or his predecessor in title.

(4) In the case of an invention consisting of a substance or composition for use in a method of treatment of the human or animal body by surgery or therapy or of diagnosis practised on the human or animal body, the fact that the substance or composition forms part of the state of the art shall not prevent the invention from being taken to be new if the use of the substance or composition in any such method does not form part of the state of the art.

10. An invention shall be taken to involve an inventive step Inventive step. if, having regard to the state of the art within the meaning of section 9(2), it is not obvious to a person having ordinary skill in the art.

11. An invention shall be taken to be capable of industrial application Industrial application. if it can be made or used in any kind of industry including agriculture, fishery and handicraft.

12. (1) It is hereby declared that the following are excluded Exclusions from patentability. from patentability, that is to say, anything which consists of—

- (a) a discovery, scientific theory or mathematical method;
- (b) a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever;
- (c) a scheme, rule or method for performing a mental act, playing a game or doing business;
- (d) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
- (e) the presentation of information.

(2) A patent shall not be granted for an invention the commercial exploitation of which would be contrary to public order or morality, or which is prejudicial to human, animal or plant life or health, or to the environment, provided that such refusal is not based solely on the ground that the commercial exploitation is prohibited by a law in force in Trinidad and Tobago.

PART V

RIGHT TO APPLY FOR AND OBTAIN A PATENT

Right to apply for patent.

13. Any person may make an application for a patent either alone or jointly with another.

Right to patent.

14. (1) A patent for an invention may be granted—
(a) primarily to the inventor or joint inventors;
(b) to the successor or successors in title of any person or persons mentioned in paragraph (a),

and to no other person.

(2) Subject to section 15, a person who makes an application for a patent shall be taken to be the person who is entitled under subsection (1) to be granted a patent and two or more persons who make such an application jointly shall be taken to be the persons so entitled.

(3) Where two or more persons have made the same invention independently of each other, the person whose application has the earliest filing date or, if priority is claimed, the earliest validly claimed priority date shall have the right to the patent as long as the said application is not withdrawn, abandoned or rejected.

Invention made by an employee or pursuant to a commission.

15. (1) In the absence of any provisions to the contrary in any contract of employment or for the execution of work, the right to a patent for an invention made in the performance of such contract of employment or in the execution of such work shall, notwithstanding section 14, be deemed to accrue to the employer, or the person who commissioned the work, as the case may be.

(2) Where an invention referred to in subsection (1) acquires an economic value much greater than the parties could

reasonably have foreseen at the time of concluding the contract of employment or for the execution of work, as the case may be, the inventor shall be entitled to equitable remuneration which may be fixed by the Court in the absence of agreement between the parties.

(3) Where an employee whose contract of employment does not require him to engage in any inventive activity makes, in the field of activities of his employer, an invention using data or means placed at his disposal by his employer, the right to the patent for such invention shall be deemed to accrue to the employer, in the absence of any provision to the contrary in the contract of employment, provided that the employee shall be entitled to equitable remuneration which, in the absence of agreement between the parties, may be fixed by the Court taking into account his emoluments, the economic value of the invention and any benefit derived from it by the employer.

(4) For the avoidance of doubt, it is hereby declared that when an invention is made by an employee whose contract of employment does not require him to engage in inventive activity, or in a field of activity different to that of his employer and without using information or means put at his disposal by the employer, the right to the patent for such invention shall accrue to the employee.

(5) The rights conferred on the inventor under subsections (1), (2), (3) and (4) shall not be restricted by contract.

(6) This section shall not apply to an invention made before the appointed day.

16. (1) Where the essential elements of the invention claimed in a patent application or patent have been unlawfully derived from an invention for which the right to the patent belongs to another person, such other person may apply to the Court for an order that the said patent application or patent be assigned to him.

Judicial
assignment of
patent
application or
patent.

(2) The Court upon receipt of such application may make such Order as it sees fit.

(3) No application for the assignment of a patent under subsection (1) shall be entertained by the Court after the expiry of

five years from the date of the grant of the patent, unless it is shown that any person registered as a proprietor of the patent knew at the time of the grant or, as the case may be, of the transfer of the patent to him, that he was not entitled to the patent.

Mention of inventor.

17. (1) The inventor or joint inventors of an invention shall have a right to be mentioned as such in any patent granted for the invention, unless in a written declaration addressed to the Controller he indicates or in the case of joint inventors, they indicate a wish not to be named.

(2) Any promise or undertaking by the inventor made to any person to the effect that he will make such a declaration shall be void.

PART VI

APPLICATIONS FOR PATENT

Making of application.

18. (1) Every application for a patent shall be made in the prescribed form, and shall be filed at the Intellectual Property Office in the prescribed manner under this Act. Such an application shall be accompanied by the prescribed filing fee.

(2) Every application for a patent shall contain—

- (a) a request for the grant of a patent;
- (b) a specification containing a description of the invention, a claim or claims and any drawings referred to in the description or any claim;
- (c) an abstract;
- (d) where the applicant's ordinary residence or principal place of business is outside of Trinidad and Tobago, an address within Trinidad and Tobago for service; and
- (e) where the applicant is not the sole inventor or the applicants are not the joint inventors, a statement justifying his or their right to be granted the patent.

(3) The specification of an application shall disclose the invention in a manner which is clear and complete enough for the

invention to be performed by a person skilled in the art, and shall, in particular, indicate at least one mode known to the applicant for carrying out the invention.

(4) The claim or claims shall—

- (a) define the matter for which the applicant seeks protection;
- (b) be clear and concise;
- (c) be supported by the description; and
- (d) relate to one invention or to a group of inventions which are so linked as to form a single general inventive concept.

(5) The purpose of the abstract is to give technical information and, upon publication, it shall not form part of the state of the art by virtue of section 9(2), and the Controller may determine whether the abstract adequately fulfills its purpose and, if it does not, may reframe it so that it does.

(6) Without prejudice to the provisions of subsections (3) and (4), rules may be made prescribing the circumstances in which the specification of an application which requires for its performance the use of a micro-organism is to be treated for the purposes of this Act as complying with subsection (3).

19. (1) The date of filing an application for a patent shall, subject to the provisions of this section, be the earliest date on which the following conditions are satisfied in relation to the application, that is to say:

Date of filing application.

- (a) the documents filed contain an indication that a patent is sought in pursuance of the application;
- (b) those documents identify the applicant or applicants for the patent;
- (c) those documents contain a description of the invention for which a patent is sought whether or not the description complies with the other provisions of this Act and the relevant rules.

(2) If the Controller finds that the application does not comply with subsection (1) he shall invite the applicant to file the required correction, and shall accord as the filing date the date of receipt of the required correction, but if no correction is made, the application shall be treated as if it had not been filed.

(3) Where the application refers to drawings which in fact are not included in the application, the Controller shall invite the applicant to furnish the missing drawings, and if the applicant complies, the Controller shall accord as the filing date the date of receipt of the missing drawings. If the applicant does not comply, the Controller shall accord as the filing date the date of receipt of the application and shall treat any reference to the said drawings as non-existent.

(4) (a) The applicant may, up to the time when the application is in order for grant, divide the application into two or more applications (“divisional applications”), provided that each divisional application shall not go beyond the disclosure in the initial application.

(b) Each divisional application shall be entitled to the filing date and, where applicable, the priority date of the initial application.

(5) The fact that a patent has been granted on an application that did not comply with the requirement of unity of invention under section 18(4)(d) shall not be a ground for the invalidation of the patent.

Priority date.

20. (1) A patent application may contain a declaration claiming priority of one or more earlier applications filed by the applicant or his predecessor in title in a country that is a party to the Paris Convention.

(2) Where the application contains a declaration under subsection (1), the Controller may require that the applicant furnish within the prescribed time a copy of the earlier application certified as correct by the office with which it was filed, or where the earlier application is an international application filed under

the Patent Co-operation Treaty, by the office with which the international application was filed, and if the earlier application is not in English, a translation thereof in English verified by the translator that the translation is to the best of his knowledge complete and faithful.

(3) The effect of the declaration referred to in subsection (1) shall be as provided in the Convention referred to therein.

(4) Where any of the requirements of this section or any rules pertaining thereto have not been complied with, the declaration referred to in subsection (1) shall be deemed to be invalid.

21. (1) The applicant shall, at the request of the Controller, furnish the Controller with the date and number of any other application for a patent or other title of protection made in an industrial or intellectual property office of any other country, or within a regional industrial or intellectual property office (hereafter in this section referred to as a “foreign application”), relating to the same or essentially the same invention as that claimed in the application filed with the Controller.

Information on corresponding foreign applications.

(2) The applicant shall upon request furnish the Controller with the following documents relating to one of the foreign applications referred to in subsection (1):

- (a) a copy of any communication received by the applicant concerning the result of any search or examination carried out in respect of the foreign application;
- (b) copy of the patent or other title of protection granted on the basis of the foreign application;
- (c) a copy of any final decision rejecting the foreign application or refusing the patent requested in the foreign application;
- (d) a copy of any final decision invalidating the patent or other title of protection granted on the basis of the foreign application referred to in subsection (2).

(3) Documents furnished pursuant to subsections (1) and (2)—

(a) shall, if not in English, be accompanied by a translation thereof in English verified by the translator that the translation is to the best of his knowledge complete and faithful; and

(b) may be used only for facilitating the evaluation of the novelty and inventive step of the invention for which the patent application is made.

(4) The applicant for a patent may submit comments on any documents furnished by him under subsections (1) and (2).

Disclosure of matter, etc., between earlier and later applications.

22. Where an application is made for a patent under section 19 and a declaration is made in accordance with section 20(2) in or in connection with that application specifying an earlier application, the first-mentioned application and any patent granted in pursuance thereof shall not be invalidated by reason only of the fact that any subject matter disclosed in the earlier application was made available to the public at any time after the date of filing of the said earlier application.

Examination as to form.

23. (1) Where an application for a patent has a date of filing and is not withdrawn, upon the payment by the applicant of the prescribed fee, the Controller shall conduct a formalities examination.

(2) On such formalities examination the Controller shall determine whether the application complies with the provisions of this Act and rules made thereunder relating to such examination.

(3) If the Controller determines that all the formal requirements have not been complied with, he shall give the applicant an opportunity to make observations on the report and to amend the application within a specified period so as to comply with those requirements and if the applicant fails to do so the Controller may refuse the application.

(4) If the Controller refuses the application under subsection (3), he shall inform the applicant in writing of his decision and the reason therefor.

24. (1) Where the Controller is of the opinion that the application complies with the requirements of section 23, he shall, upon payment by the applicant of the prescribed fee, cause the application to be examined as to whether there has been compliance with the requirements of sections 8 to 12 and 18(3) and (4) and the rules relating thereto.

Search and substantive examination.

(2) For the purposes of the examination under this section, the Controller may transmit the application to a duly authorised authority with which an arrangement to that effect has been made.

25. (1) If the Controller determines that any of the requirements of this Act or the rules made thereunder are not complied with, he shall so inform the applicant and shall give him an opportunity within a specified period to make observations on the determination and, subject to section 26(2), to amend the application so as to comply with those requirements, and if the applicant fails either to satisfy the Controller that the said requirements are complied with, or to amend the application so as to comply with them, the Controller shall, subject to section 7, refuse the application.

Refusal or grant of patent.

(2) If the Controller determines that the application, whether as originally filed or as amended in pursuance of section 23, this section, or section 26, complies with the requirements of this Act and the relevant rules made thereunder, he shall notify the applicant of that fact and on payment within the prescribed period of the fee prescribed for the grant, grant him a patent, and if the said fee is not so paid, the application shall be deemed to be withdrawn.

(3) Where two or more patent applications for the same invention, having the same date of filing or the same date of priority, are filed by the same applicant or his successor-in-title, the Controller may on that ground refuse to grant a patent in pursuance of more than one of the applications.

(4) If the Controller refuses the application under subsection (1) or (3), he shall inform the applicant in writing of his decision and of the reasons for his decision.

(5) The patent shall be deemed to be granted on the date the Controller publishes under section 28(1) a notice of the grant of the patent.

Amendment of application; time limit for grant; changes in patent.

26. (1) At any time before a patent is granted under this Act, the applicant may, in accordance with the prescribed conditions and subject to subsection (2), amend the application of his own volition.

(2) No amendment of an application shall be allowed under section 23(3) or 25(1) or this section if such amendment extends the matter disclosed in the application as filed.

(3) The Controller shall, whenever possible, reach a final decision on the application not later than two years after the commencement of the examination referred to in section 24.

(4) The Controller shall, upon request of the owner of the patent, make changes in the text or drawings of the patent in order to limit the extent of the protection conferred thereby, provided that the change would not result in the disclosure contained in the patent going beyond the disclosure contained in the initial application on the basis of which the patent was granted.

Withdrawal of application.

27. At any time before a patent is granted under this Act, the applicant may, in the prescribed manner, withdraw his application and any such withdrawal may not be revoked.

Notification of grant and publication of specification.

28. (1) The Controller shall as soon as practicable after a patent has been granted under section 25(2) publish a notice of the grant in a periodical.

(2) At the same time as the publication under subsection (1) of the notice of a grant, the Controller shall publish in the prescribed manner particulars of the patent and also such matters and information as appeared to him to be useful or important.

(3) The Controller shall, as soon as practicable after he publishes a notice under subsection (1), issue to the proprietor of the patent a certificate, in the prescribed form, that the patent has been granted to him, and a copy of the patent.

PART VII

PROVISIONS AS TO PATENTS AFTER GRANT

29. A patent granted under this Act shall take effect on the date on which notice of its grant is published in a periodical and, subject to this Act, shall continue in force until the end of the period of twenty years beginning with the date of filing of the application for the patent. Term of patent.

30. (1) In order to maintain the patent or patent application, an annual maintenance fee shall be paid in advance to the Controller for each year, starting one year after the date of filing the application for grant of the patent. A period of grace of six months shall be allowed for the late payment of the annual maintenance fee on payment of the prescribed surcharge. If an annual maintenance fee is not paid in accordance with this subsection, the patent application shall be deemed to have been withdrawn or the patent shall lapse. Annual fee.

(2) If a patent ceases to have effect under subsection (1), the lapse of the patent shall be entered in the register and published in a periodical.

31. (1) The proprietor of a patent may at any time by notice given to the Controller in the prescribed manner offer to surrender his patent or one or more claims contained in his patent. Surrender of patent or of claim.

(2) Where an offer is made under this section, the Controller shall advertise the offer in the prescribed manner and any person interested may, within the prescribed period commencing on the date of the publication of the advertisement, give notice to the Controller of his opposition to the proposed surrender.

(3) Where notice of opposition is duly given under this section, the Controller shall notify the proprietor of the patent and determine the question.

(4) If the Controller is satisfied that the patent or any claim or claims contained in the patent may properly be surrendered, he may accept the offer, and record his acceptance in the register, and shall, as soon as practicable, publish notice of his acceptance in a periodical.

(5) As from the date when notice of acceptance is published in a periodical under subsection (4), the patent or claim or claims shall cease to have effect, but no action for infringement shall lie in respect of any act done before that date and no right to compensation shall accrue for any use of the patented invention before that date for purposes of State.

(6) Where a patent has been granted to two or more persons, a notice in accordance with subsection (1) shall be signed by each of these persons.

PART VIII

PROPERTY IN ASSENT APPLICATIONS AND PATENTS

Nature of and transactions in patents.

32. (1) Any patent or application for a patent is personal property (without being a thing in action), and any patent or any such application and rights in or under it may be transferred, created or granted in accordance with subsections (2) to (6).

(2) Subject to section 33(3), any patent or any such application, or any right in it, may be assigned or mortgaged.

(3) Any patent or any such application or right shall vest by operation of law in the same way as any other personal property and may be vested by an assent of personal representatives.

(4) Subject to section 33(3), a licence may be granted under any patent or any such application for working the invention which is the subject of the patent or the application, and—

(a) to the extent that the licence so provides, a sub-licence may be granted under any such licence and any such licence or sub-licence may be assigned or mortgaged; and

(b) any such licence or sub-licence shall vest by operation of law in the same way as any other personal property and may be vested by an assent of personal representative.

(5) Any of the following transactions, that is to say:

(a) any assignment or mortgage of a patent or any such application, or any right in a patent or any such application;

- (b) any assent relating to any patent or any such application or right,

shall be void unless it is in writing and is signed by or on behalf of the parties to the transaction (or, in the case of an assent or other transaction by a personal representative, by or on behalf of the personal representative) or in the case of a body corporate is so signed or is under the seal of that body.

(6) An assignment of a patent or any such application or a share in it, and an exclusive licence granted under any patent or any such application, may confer on the assignee or licensee the right of the assignor or licensor to bring proceedings by virtue of section 50 for a previous infringement.

33. (1) Where a patent is granted to two or more persons, each of them shall, subject to any agreement to the contrary, be entitled to an equal undivided share in the patent.

Co-ownership of patents and applications for patents.

(2) Subject to the provisions of this section, where two or more persons are proprietors of a patent, then, subject to any agreement for the time being in force, each of those persons shall be separately entitled, by himself or his agents, in respect of the invention concerned, for his own benefit and without accounting to the other or others—

- (a) to do any act which would, apart from this subsection, amount to an infringement of the patent concerned and any such act shall not amount to an infringement of that patent; or
- (b) to bring civil proceedings for infringement of the patent pursuant to section 50.

(3) Subject to any agreement for the time being in force, where two or more persons are proprietors of a patent, one of them shall not, without the consent of the other or others, grant a licence under the patent or assign or mortgage a share in the patent.

(4) Subject to the provisions of this section, where two or more persons are proprietors of a patent, anyone else may supply one of those persons with the means, relating to an essential element of the invention, for putting the invention into effect, and the supply of those means by virtue of this subsection shall not amount to an infringement of the patent.

(5) Where a patented product is disposed of by any of two or more proprietors to any person, that person and any other person claiming through him shall be entitled to deal with the product in the same way as if it had been disposed of by a sole registered proprietor.

(6) Nothing in subsection (1) or (2) shall affect the mutual rights or obligations of trustees or of the personal representatives of a deceased person, or their rights or obligations as such.

(7) The foregoing provisions of this section shall have effect in relation to an application for a patent which is filed as they have effect in relation to a patent and—

- (a) references to a patent and a patent being granted shall accordingly include references respectively to any such application and to the application being filed; and
- (b) the reference in subsection (5) to a patented product shall be construed accordingly.

PART IX

REGISTER OF PATENTS, EVIDENCE OF REGISTER, DOCUMENTS, ETC.

Register of patents.

34. (1) There shall be kept and maintained by the Controller at the Intellectual Property Office a register of patents in which there shall be entered particulars of patents in force, of assignments and transmissions of patents and of licences under patents and notice 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 of proprietorship of patent as may be prescribed by Rules.

(2) Without prejudice to subsection (1) or any other provision of this Act, rules may make provisions with respect to the following matters including provisions imposing requirements as to any of those matters:

- (a) the registration of patents and of applications for patents;
- (b) the registration of transactions, instruments or events affecting rights in or under patents and applications;

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- (c) the furnishing to the Controller of any prescribed documents or description of documents in connection with any matter which is required to be registered;
- (d) the correction of errors in the register and in any documents filed at the Intellectual Property Office in connection with registration;
- (e) the publication and advertisement of anything done under this Act or rules in relation to the register.

(3) Notwithstanding anything in subsection (2)(b), no notice of any trust, whether express, implied or constructive, shall be entered in the register and the Controller shall not be affected by any such notice.

(4) The register need not be kept in documentary form.

(5) Save as otherwise provided by rules, the public shall have a right to inspect the register at the Intellectual Property Office at all convenient times.

(6) Any person who applies for a certified copy of an entry in the register or a certified extract from the register shall be entitled to obtain such a copy or extract on payment of a fee prescribed in relation to certified copies and extracts, and rules may provide that any person who applies for an uncertified copy or extract shall be entitled to such a copy or extract on payment of a fee prescribed in relation to uncertified copies and extracts.

(7) Applications under subsection (6) or rules made by virtue of that subsection shall be made in such manner as may be prescribed.

(8) In relation to any portion of the register kept otherwise than in documentary form—

- (a) the right of inspection conferred by subsection (5) is, save as otherwise provided by rules, a right to inspect the material on the register; and
- (b) the right to a copy or extract conferred by subsection (6) or by rules is a right to a copy or extract in a form in which it can be taken away and in which it is visible and legible.

Effect of registration, etc., on rights in patents.

35. (1) Any person who claims to have acquired the property in a patent or application for a patent by virtue of any transaction, instrument or event to which this section applies shall be entitled as against any other person who claims to have acquired that property by virtue of an earlier transaction, instrument or event to which this section applies if, at the time of the later transaction, instrument or event—

- (a) the earlier transaction, instrument or event was not registered, or
- (b) in the case of any application, notice of the earlier transaction, instrument or event had not been given to the Controller, and
- (c) in any case, the person claiming under the later transaction, instrument or event, did not know of the earlier transaction, instrument or event.

(2) Subsection (1) shall apply equally to the case where any person claims to have acquired any right in or under a patent or application for a patent, by virtue of a transaction, instrument or event to which this section applies, and that right is incompatible with any such right acquired by virtue of an earlier transaction, instrument or event to which this section applies.

(3) This section applies to the following transactions, instruments and events:

- (a) the assignment of a patent or application for a patent, or a right in it;
- (b) the mortgage of a patent or application or the granting of security over it;
- (c) the grant, assignment of a licence or sub-licence, or mortgage of a licence or sub-licence, under a patent or application;
- (d) the death of the proprietor or one of the proprietors of any such patent or application or of any person having a right in or under a patent or application and the vesting by an assent of the personal representative of a patent, application or any such right; and

(e) any order or directions of a Court or other competent authority—

(i) transferring a patent or application or any right in or under it to any person; or

(ii) that an application should proceed in the name of any person,

and in either case the event by virtue of which the Court or authority had power to make any such order or give any such directions.

(4) Where an application for the registration of a transaction, instrument or event has been made, but the transaction, instrument or event has not been registered, then, for the purposes of subsection (1)(a), registration of the application shall be treated as registration of the transaction, instrument or event.

36. (1) The Controller shall, on a request being made to him in the prescribed manner and on payment of the prescribed fee, if any, give the person making the request such information as may be prescribed.

Information about and inspection of patent applications and patents.

(2) Subject to subsection (4), until a patent is granted documents or information constituting or relating to the application shall not, without the written consent of the applicant, be published or communicated to any person by the Controller.

(3) Where a patent application has been withdrawn in accordance with section 27, documents or information constituting or relating to the application shall not, without the written consent of the applicant, be published or communicated to any person by the Controller.

(4) Subsection (2) shall not prevent the Controller from publishing or communicating to others any prescribed bibliographic information about an unpublished patent application.

37. (1) The Controller may, in accordance with the provisions of this section, correct any linguistic error, error of transcription, clerical error or mistake in any specification of a patent, any application for a patent, or any document filed in pursuance of such an application, or any error in the register.

Correction of errors.

(2) A correction may be made in pursuance of this section either upon a request made in the prescribed manner and accompanied by the prescribed fee, or without such a request.

(3) Where the Controller proposes, or a request is made, to make a correction referred to in subsection (1), he shall before determining the matter give notice of the proposal to the proprietor of or applicant for the patent, as the case may be, and to any person, other than the person by whom the request is made, who appears to him to be concerned.

Rectification of register.

38. (1) The Court may, on the application of a person aggrieved, order the register to be rectified by the making, or the variation or deletion of any entry in it.

(2) In proceedings under this section the Court may determine any question which it may be necessary or expedient to decide in connection with the rectification of the register.

(3) Rules of Court may provide for the notification of any application under this section to the Controller and for his appearance on the application and for giving effect to any order of the Court on the application.

Evidence of register, documents, etc.

39. (1) The register shall be *prima facie* evidence of anything required or authorised by this Act or rules to be registered and shall be admissible and sufficient evidence of any such thing.

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

(3) Each of the following, that is to say:

- (a) a copy of an entry in the register or an extract from the register which is supplied under section 34(6);

- (b) a copy of any document kept in the Intellectual Property Office, or an extract from any such document, any specification of patent drawings or other matter which has been published under section 28(2),

which purports to be a certified copy or a certified extract shall be admitted in evidence without further proof and without production of the original, and such evidence shall be sufficient evidence of the matter therein stated.

(4) In this Part “certified copy” and “certified extract” means a copy and extract certified by the Controller and sealed with the seal of the Intellectual Property Office.

PART X

RIGHTS OF OWNER OF PATENT

40. (1) Subject to the other provisions of this Part, the owner of a patent shall have the following exclusive rights in relation to the patent: Rights of owner of patent.

- (a) to exploit the patented invention;
- (b) to assign or transmit the patent;
- (c) to conclude licence contracts.

(2) The owner of the patent shall have the right, subject to sections 43, 46 and 58, to take action against any person exploiting the patented invention in Trinidad and Tobago without his agreement.

(3) For the purposes of this Part, “to exploit” or “exploiting” a patented invention means any of the following acts in relation to the patent:

- (a) when the patent has been granted in respect of a product—
 - (i) making, importing, offering for sale, selling or using the product;
 - (ii) stocking such product for the purposes of offering for sale, selling or using;

(b) when the patent has been granted in respect of a process—

- (i) using the process;
- (ii) doing any of the acts referred to in paragraph (a), in respect of a product obtained directly by means of the process.

Prevention of indirect use of invention.

41. (1) While in force a patent shall confer on its proprietor the right to prevent all persons not having his consent from supplying or offering to supply in Trinidad and Tobago a person (other than a person entitled to engage in commercial working of the patented invention) with means relating to an essential element of that invention, for putting it into effect therein, provided that that person knows, or it is obvious to a reasonable person in the circumstances that those means are suitable for putting, and are intended to put that invention into effect.

(2) Subsection (1) shall not apply when the means referred to therein are staple commercial products, except when the person induces the person supplied to commit acts which the proprietor of the patent is entitled to prevent by virtue of section 40.

(3) Persons performing acts referred to in paragraphs (a), (b), or (c) of section 42 shall not be considered to be persons entitled to engage in commercial working of the invention for the purposes of subsection (1).

Limitation of effect of patent.

42. The rights conferred by a patent shall not extend to—

- (a) acts done privately and for non-commercial purposes;
- (b) acts done for experimental purposes relating to the subject matter of the relevant patented invention;
- (c) the extemporaneous preparation for individual cases in a pharmacy of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared; and

(d) the use of articles on aircraft, land vehicles or vessels of other countries which temporarily or accidentally enter the airspace, the territory or territorial waters of Trinidad and Tobago.

43. The rights conferred by a patent shall not extend to acts in respect of articles which have been put on the market in Trinidad and Tobago by the owner of the patent or with his consent.

Exhaustion of rights.

44. The extent of the protection conferred by a patent shall be determined by the terms of the claim; and, the description and drawings shall be used to interpret the claims.

Extent of protection.

PART XI

VOLUNTARY AND NON-VOLUNTARY LICENCES

45. (1) Subject to section 33, a proprietor of a patent application or patent may grant a licence in respect of the relevant invention.

Voluntary licences.

(2) A licence contract shall be in writing and may, on payment of the prescribed fee, be recorded in the register and the relevant notice published in a periodical as prescribed by the Rules. Until such contract has been so recorded, the licence shall have no effect against third parties, unless otherwise decided by the Court.

(3) In the absence of any provision to the contrary in the terms of a licence contract, a licensee may not extend to another person the authorisation conferred on him by the proprietor in accordance with subsection (1), nor may he assign or mortgage his licence.

(4) In the absence of any provision to the contrary in the terms of a licence contract, the proprietor may continue to enjoy the rights conferred on him by sections 40 and 41.

(5) To the extent that the licence has been granted as an exclusive licence, the proprietor may not grant a licence in respect of the invention to a third person and may not himself do any of the acts referred to in sections 40 and 41.

(6) If before the expiration of the licence contract, any of the following events occur with respect to any patent application or patent, the subject of that contract:

- (a) the patent application is withdrawn or is deemed to be withdrawn;
- (b) the patent application is treated as if it had not been filed;
- (c) the grant of a patent is refused; or
- (d) the patent is revoked,

the licensee shall, from the date of the event, be no longer bound to make any payment directly relating to that patent application or patent.

(7) In any of the cases referred to in subsection (6), the licensee shall have the right to repayment of the payments already made and directly relating to the patent application or patent in question, provided he has not, or practically has not, benefitted from the licence.

Non-voluntary
licences.
[18 of 2000].

46. (1) At any time after the expiration of three years from the date of grant of a patent under this Act or four years from the date of the filing, whichever is later, any person interested may apply to the Court for the grant of a licence under the patent on any of the following grounds, namely, that a market for the patented invention is not being supplied, or is not being supplied on reasonable terms in Trinidad and Tobago.

(2) Subject to subsections (4), (5), (6) and (7), if the Court is satisfied that either of the grounds referred to in subsection (1) is established, the Court may make an Order for the grant of the licence in accordance with the application on such terms as the Court thinks fit.

(3) A licence granted under this section—

- (a) is not exclusive;
- (b) shall not be assigned otherwise than in connection with the goodwill of the business in which the patented invention is used; and

(c) is limited to the supply of the patented invention predominantly in Trinidad and Tobago.

(4) Where the Court is satisfied that the grounds on which any licence granted under this section have ceased to exist, it may, on the application of any interested party, terminate such licence.

(5) Any person to whom a licence is granted under this section shall pay such remuneration to the patentee as may be agreed, or as may be determined by a method agreed upon between that person and the patentee, or in default of agreement, as the Court may, taking into account the economic value of the licence, determine on the application of either party.

(6) Before a licence is granted under subsection (1), the Court must be satisfied that the person applying for the licence has made efforts to obtain a licence from a patentee on reasonable commercial terms and conditions within a reasonable time, but has failed to do so.

(7) A licence shall not be granted under this section in respect of a patent relating to semiconductor technology except for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive.

47. The powers of the Court on an application under section 46 shall be exercised with a view to securing that the inventor or other person beneficially entitled to a patent shall receive reasonable remuneration having regard to the economic value of the licence.

Exercise of powers on applications under section 46.

48. (1) Where the public interest so requires, or where the Minister decides that the manner of exploitation by the owner of a patent or his licensee is anti-competitive, then subject to subsection (2) the Minister may authorise a State agency or any person in writing, to make use, exercise or vend the patented invention for the services of the State subject to the payment of adequate compensation to the owner thereof, taking into account the economic value of the exploitation, and anything done by virtue of this subsection shall not amount to an infringement of the patent.

Use of patented invention for services of the State.

(2) Before issuing his authorisation under subsection (1), the Minister shall hear the owner of the patent and any other interested party who may wish to be heard.

(3) Subsection (2) does not apply in the case of a national emergency.

(4) The Minister may, upon the request of any of the parties, vary the terms of the authorisation.

(5) (a) Upon the request of the owner of the patent, the Minister shall terminate the authorisation if he is satisfied that the circumstances which led to his decision have ceased to exist and are unlikely to recur, or that the State agency or person authorised by him has failed to comply with the terms of the authorisation;

(b) Notwithstanding paragraph (a), the Minister shall not terminate the authorisation if he is satisfied that the need for adequate protection of the legitimate interests of the State agency or the person authorised by him justifies maintaining the decision.

(6) An authorisation granted to a person other than a State agency shall be subject to the conditions prescribed by subsection (3) of section 46.

(7) (a) Before an authorisation is granted under subsection (1), the Minister must be satisfied that the proposed user has made efforts to obtain a licence from the patentee on reasonable commercial terms and conditions within a reasonable time, but has failed to do so.

(b) Paragraph (a) shall not apply in cases of national emergency or other circumstances of extreme urgency, provided however, that in such cases the owner of the patent shall be notified of the Minister's decision as soon as is reasonably practicable.

(8) Any decision of the Minister under subsection (1), (4) or (5) may be subject to judicial review.

PART XII

INFRINGEMENT

49. Subject to the provisions of sections 42, 43, 44, 46 and 48, the performance of any of the acts referred to in sections 40 and 41, in relation to a patent while it is in force, without the authorisation of the proprietor of the patent, shall constitute an infringement.

Infringement.

50. (1) Subject to the provisions of this Part, civil proceedings may be brought in the Court by the proprietor of a patent in respect of any act alleged to infringe the patent and (without prejudice to any other jurisdiction of the Court) in those proceedings a claim may be made—

Action for infringement.

- (a) for an injunction restraining the defendant from any apprehended act of infringement;
- (b) for an order for him to deliver up or destroy any patented product in relation to which the patent is infringed or any article in which that product is inextricably comprised;
- (c) for damages in respect of the infringement;
- (d) for an account of the profits derived by him from the infringement;
- (e) for a declaration that the patent is valid and has been infringed by him.

(2) The Court shall not, in respect of the same infringement, both award the proprietor of a patent damages and order that he shall be given an account of the profits.

51. (1) In proceedings for infringement of a patent damages shall not be awarded, and no order shall be made for an account of profits, against a defendant who proves that at the date of the infringement he was not aware, and had no reasonable grounds for supposing that the patent existed; and, a person shall not be taken to have been so aware or to have had reasonable grounds for so supposing by reason only of the application to a product

Restrictions on recovery of damages for infringement.

of the word “patent” or “patented”, or any word or words expressing or implying that a patent has been obtained for the product, unless the number of the patent accompanied the word or words in question.

(2) Where an amendment of the specification of a patent has been allowed under any of the provisions of this Act, no damages shall be awarded in proceedings for an infringement of the patent committed before the decision to allow the amendment, unless the Court is satisfied that the specification of the patent as published was framed in good faith and with reasonable skill and knowledge.

Relief for infringement of partially valid patent.

52. (1) If the validity of a patent is put in issue in proceedings for infringement of the patent and it is found that the patent is only partially valid, the Court may, subject to subsection (2), grant relief in respect of that part of the patent which is found to be valid and infringed.

(2) Where in any such proceedings it is found that a patent is only partially valid, the Court shall not grant relief by way of damages, costs or expenses, except where the plaintiff proves that the specification for the patent was framed in good faith and with reasonable skill and knowledge and in that event the Court may grant relief in respect of that part of the patent which is valid and infringed, subject to the discretion of the Court as to costs or expenses and as to the date from which damages should be reckoned.

(3) As a condition of relief under this section, the Court may direct that the specification of the patent shall be amended to its satisfaction upon an application made for that purpose under section 63, and an application may be so made accordingly, whether or not all other issues in the proceedings have been determined.

Certificate of contested validity of patent.

53. (1) If in any proceedings before the Court the validity of a patent to any extent is contested and that patent is found by the Court to be wholly or partially valid, the Court may certify the finding and the fact that the validity of the patent was so contested.

(2) Where a certificate is granted under this section, then, if in any subsequent proceedings before the Court for infringement of the patent concerned or for revocation of the patent a final order or judgment is made or given in favour of the party relying on the validity of the patent as found in the earlier proceedings, that party shall, unless the Court otherwise directs, be entitled to his costs or expenses as between Attorney-at-law and client (other than the costs of expenses of any appeal in the subsequent proceedings).

54. (1) Subject to the provisions of this section, the holder of an exclusive licence under a patent shall have the same right as the proprietor of the patent to bring proceedings in respect of any infringement of the patent committed after the date of the licence; and, references to the proprietor of the patent in this Act relating to infringement shall be construed accordingly.

Proceedings for infringement by exclusive licensee.

(2) In awarding damages or granting any other relief in any such proceedings, the Court shall take into consideration any loss suffered or likely to be suffered by the exclusive licensee as such as a result of the infringement, or, as the case may be, the profits derived from the infringement, so far as it constitutes an infringement of the rights of the exclusive licensee as such.

(3) In any proceedings taken by an exclusive licensee by virtue of this section, the proprietor of the patent shall be made a party to the proceedings, but if made a defendant shall not be liable for any costs or expenses unless he enters an appearance and takes part in the proceedings.

55. Where, by virtue of a transaction, instrument or event to which section 35 applies, a person becomes the proprietor or one of the proprietors or an exclusive licensee of a patent and the patent is subsequently infringed, the Court shall not award him damages or order that he be given an account of the profits in respect of such a subsequent infringement occurring before the transaction, instrument or event is registered, unless —

Effect of non-registration on infringement proceedings.

- (a) the transaction, instrument or event is registered within the period of six months beginning with its date; or

- (b) the Court is satisfied that it was not practicable to register the transaction, instrument or event before the end of that period and that it was registered as soon as was practicable thereafter.

Remedy for
groundless
threats of
infringement
proceedings.

56. (1) Where a person (whether or not the proprietor of, or entitled to any right in, a patent) by circulars, advertisements or otherwise threatens another person with proceedings for any infringement of a patent, a person aggrieved by the threats (whether or not he is the person to whom the threats are made) may, subject to subsection (4), bring proceedings in Court against the person making the threat, claiming any relief mentioned in subsection (3).

(2) In any such proceedings the plaintiff shall, if he proves that the threats were so made and satisfies the Court that he is a person aggrieved by them, be entitled to the relief claimed, unless—

- (a) the defendant proves that the acts in respect of which proceedings were threatened constitute or, if done, would constitute an infringement of a patent; and
- (b) the patent alleged to be infringed is not shown by the plaintiff to be invalid in a relevant respect.

(3) The said relief is—

- (a) a declaration to the effect that the threats are unjustifiable;
- (b) an injunction against the continuance of the threats; and
- (c) damages in respect of any loss which the plaintiff has sustained by the threats.

(4) Proceedings may not be brought under this section for a threat to bring proceedings for an infringement alleged to consist of making or importing a product for disposal or of using a process.

(5) 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.

57. (1) Without prejudice to the Court's jurisdiction to make a declaration apart from this section, a declaration that an act (that is to say, the use by any person of any process, or the making or use or sale by any person of any product) does not, or a proposed act would not, constitute an infringement of a patent, may be made by the Court in proceedings between the person doing or proposing to do the act and the proprietor of the patent, notwithstanding that no assertion to the contrary has been made by the proprietor, if it is shown—

Power of Court to make declaration as to non-infringement.

- (a) that that person has applied in writing to the proprietor for a written acknowledgement to the effect of the declaration claimed, and has furnished him with full particulars in writing of the act in question; and
- (b) that the proprietor has refused or failed within a reasonable time to give any such acknowledgement.

(2) No declaration under subsection (1) shall be made if the act in question is already the subject matter of an infringement proceeding.

58. (1) Where a patent is granted for an invention, a person who before the date of filing of the patent application or, if priority was claimed, before the date of priority, does in good faith in Trinidad and Tobago an act which would constitute an infringement of the patent if it were then in force, or makes in good faith effective and serious preparation to do such an act, shall have the rights specified in subsection (2).

Right to continue use begun before date of filing or priority.

- (2) Any such person shall have the right—
 - (a) to continue to do or, as the case may be, to do that act himself; and
 - (b) if the act was done or preparations had been made to do it in the course of a business—
 - (i) to assign the right under paragraph (a);
 - (ii) to transmit the right under paragraph (a) to his heirs on his death or, in the case of a body corporate on its dissolution, to any person who acquires that part of the business in the course of which the act was done or preparations had been made to do it; or

(iii) to authorise the act to be done by any partners of his for the time being in that business,

and the doing of that act by virtue of this subsection shall not amount to an infringement of the patent concerned.

(3) The rights specified in subsection (2) shall not include the right to grant a licence to any person to do an act referred to in subsection (1).

(4) Where a product which is the subject of a patent is disposed of by any person to another in exercise of a right conferred by subsection (2), that other and any person claiming through him shall be entitled to deal with the product in the same way as if it had been disposed of by a sole proprietor of the patent.

PART XIII

REVOCATION OF PATENT

Application for revocation of patent.

59. (1) Subject to the provisions of this section and section 60, any person may apply to the Court for revocation of a patent.

(2) An application for the revocation of a patent on the ground mentioned in section 60(e) may be made only by a person found by the Court pursuant to section 16 to be entitled to be granted that patent or to be granted a patent for part of the matter covered by the patent, or, in case more than one person is found to be so entitled, by all those persons.

(3) An application under this section may be filed even if the patent has lapsed.

Grounds for revocation.

60. An application for revocation of a patent may be made only on any of the following grounds, that is to say:

- (a) the subject matter of the patent is not patentable under Part IV;
- (b) the specification of the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;

- (c) the subject matter of the patent extends beyond the content of the patent application as filed or, if the patent was granted on a divisional application, it extends beyond the content of the relevant earlier application as filed;
- (d) the protection conferred by the patent has been extended by an amendment which should not have been allowed;
- (e) the patent was granted to a person who was not entitled thereto under section 14 or section 15, as the case may be.

61. (1) If on an application for revocation of a patent the Court considers that the grounds for revocation mentioned in section 60 prejudice the maintenance of the patent, the Court may by order unconditionally revoke the patent.

Examination of application for revocation.

(2) If on an application for revocation of a patent the Court considers that the grounds for revocation mentioned in section 60 affect the patent only partially, the Court may make an Order for the revocation of the patent unless within a time specified by the Court the relevant specification is amended to the satisfaction of the Court.

(3) If required by the Court the proprietor of the patent shall furnish to the Court such information as may be required in regard to foreign applications filed for protection of the invention or documents filed with any other national or regional industrial property office or in connection with any proceedings relating to an application, a patent or other title of protection for the same or essentially the same invention.

PART XIV

PUTTING VALIDITY IN ISSUE

62. (1) Subject to the following provisions of this section, the validity of a patent may be put in issue before the Court only:

Circumstances in which validity of patent may be put in issue.

- (a) by way of defence in proceedings for infringement under section 50 or 54;
- (b) in proceedings under section 48, 56, 57 or 59.

(2) The validity of a patent may not be put in issue in any other proceedings and, in particular, no proceedings may be instituted (whether under this Act or otherwise) seeking only a declaration as to the validity or invalidity of a patent.

(3) The only grounds on which the validity of a patent may be put in issue (whether in proceedings for revocation under section 59 or otherwise) are the grounds on which the patent may be revoked under that section.

(4) No determination shall be made in any proceedings mentioned in subsection (1) on the validity of a patent which any person puts in issue on the ground specified in section 60(e) unless—

(a) it has been determined, either in entitlement proceedings commenced by that person or in the proceedings in which the validity of the patent is in issue, that the patent should have been granted to him and not some other person; and

(b) except it has been so determined in entitlement proceedings, the proceedings in which the validity of the patent is in issue are commenced before the end of the period of two years beginning with the date of the grant of the patent or it is shown that any person registered as a proprietor of the patent knew at the time of the grant or of the transfer of the patent to him that he was not entitled to the patent.

(5) Where the validity of a patent is put in issue by way of defence, the Court shall, if it thinks just to do so, give the defendant an opportunity to comply with the condition in subsection (4)(a).

(6) In subsection (4) “entitlement proceedings”, in relation to a patent, means proceedings to determine the question whether a patent was granted to a person not entitled to it.

Amendment of patent in infringement or revocation proceedings.

63. (1) Subject to subsection (5), in any proceedings before the Court in which the validity of a patent is put in issue, the Court may allow the proprietor of the patent to amend the patent in such manner, and subject to such terms as to advertising the proposed amendment and as to costs, expenses or otherwise, as the Court thinks fit.

(2) A person may give notice to the Court of his opposition to an amendment proposed by the proprietor of the patent under this section, and if he does so the Court shall notify the proprietor and consider the opposition in deciding whether the amendment or any amendment should be allowed.

(3) An amendment of a specification of a patent under this section shall have effect and be deemed always to have had effect from the grant of the patent.

(4) Where an application for an order under this section is made to the Court, the applicant shall notify the Controller who shall be entitled to appear and be heard and shall appear if so directed by the Court.

(5) No such amendment shall be allowed if it discloses matter which extends beyond that disclosed in the specification of the granted patent or extends the scope of the protection conferred by the patent.

PART XV

UTILITY CERTIFICATES

64. (1) The provisions in this Act relating to patents or to patent applications shall, unless otherwise provided under this Part, be applicable to utility certificates or to utility certificate applications, as the case may be.

Provisions applicable to utility certificates.

(2) Sections 8, 10, 24, 29, 30(1) and 60(a) shall not apply to utility certificates nor to utility certificate applications.

65. (1) A utility certificate may be granted only for an invention which is new and is capable of industrial application.

Protection by utility certificate.

(2) An invention for which a utility certificate is requested shall not be considered new if it differs from earlier inventions only in minor respects or in details which are immaterial to the function or application of the invention.

66. A utility certificate granted under this Act shall take effect on the date on which notice of its grant is published in a periodical and,

Term of utility certificate.

subject to this Act, shall continue in force until the end of a period of ten years beginning on the date on which the utility certificate application or, where relevant, the patent application was filed.

Grounds for revocation.

67. An application for revocation of a utility certificate may be made only on the grounds—

- (a) that the subject matter of the utility certificate may not be protected by a utility certificate under Part IV and this Part; and
- (b) mentioned in section 60(b), (c), (d) or (e).

Conversion of application

68. (1) At any time before a patent is granted or before the refusal of a patent application is notified under this Act, an applicant for a patent may, in accordance with the prescribed conditions, request that his application be treated as a utility certificate application.

(2) In the same circumstances mentioned in subsection (1), an applicant for a utility certificate may in accordance with the prescribed conditions and upon payment of the prescribed fee, request that his application be treated as a patent application.

(3) The Controller shall refuse a request under subsection (1) or (2) if the patent application or the utility certificate application has already been the subject of a request under either of those subsections.

Registration of utility certificates.

69. Particulars of utility certificates granted and notice of all matters which are required by or under this Act or rules to be registered, shall be registered in a special part of the register of patents by the Controller.

PART XVI

INTERNATIONAL ARRANGEMENTS

Notification as to convention countries.

70. The Minister may, with a view to the fulfilment of a treaty or international convention or arrangement, by Order declare that any country specified in the Order is a convention country for the purposes of section 20.

71. (1) The Patent Co-operation Treaty (in this section referred to as “the Treaty”) and any regulations made thereunder shall be given full effect.

Implementation
of Patent
Co-operation
Treaty.

(2) Where the provisions of this Act conflict with those of the Treaty, the provisions of the Treaty shall prevail.

(3) Where this Act does not provide for any matter provided for by the Treaty, the provisions of the Treaty shall apply.

(4) The Intellectual Property Office shall act as a receiving office, designated office and elected office as provided for in the Treaty.

(5) The processing and examination of an international application for a patent designating Trinidad and Tobago shall not commence before the expiration of the time limit prescribed in Articles 22 and 39 of the Treaty, except that such processing and examination may commence if the applicant files an express request at the Intellectual Property Office within that time limit.

(6) The Controller shall not grant or refuse to grant a patent on an international application before the expiration of the time limit prescribed in Rule 52 as provided for in Article 28 or in Rule 78 as provided for in Article 41, as the case may be, except with the consent of the applicant in writing.

(7) Where an international application for a patent which purports to designate Trinidad and Tobago is refused an international filing date under the Treaty because—

- (a) it is declared considered withdrawn; or
- (b) the International Bureau has made a finding under Article 12(3) of the Treaty; or
- (c) the receiving office has declared that the designation of Trinidad and Tobago is considered withdrawn,

and the Controller determines that such refusal was caused by an error or omission in the Intellectual Property Office or any other institution having functions under the Treaty, he may direct that the application shall be treated as an application under this Act.

Judicial notice of certain treaties and instruments thereunder.

72. (1) Judicial notice shall be taken of the Paris Convention, the Budapest Treaty, the Patent Corporation Treaty and of any bulletin, journal or gazette published under such Convention or Treaty.

(2) Any document mentioned in any such bulletin, journal or gazette shall be admissible as evidence of any instrument or other act thereby communicated, or of any institution established by or having functions under any Convention or Treaty mentioned in subsection (1).

PART XVII
OFFENCES

Falsification of register, etc.

73. If a 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 or reproduction 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 liable—

- (a) on summary conviction, to a fine of twenty thousand dollars;
- (b) on conviction on indictment, to a fine of forty thousand dollars and to imprisonment for ten years.

Unauthorised claim of patent rights.

74. (1) If a person falsely represents that anything disposed of by him for value is a patented product or process, he shall, subject to the following provisions of this section, liable on summary conviction to a fine of ten thousand dollars.

(2) For the purposes of subsection (1) a person who for value disposes of an article having stamped, engraved or impressed on it or otherwise applied to it the word “patent” or “patented” or anything expressing or implying that the article is a patented product, shall be taken to represent that the article is a patented product.

(3) Subsection (1) does not apply where the representation is made in respect of a product after the patent for that product or, as the case may be, the process in question has expired or been revoked and before the end of a period which is reasonably sufficient to enable the accused to take steps to ensure that the representation is not made (or does not continue to be made).

(4) In proceedings for an offence under this section it shall be a defence for the accused to prove that he used due diligence to prevent the commission of the offence.

75. (1) If a person represents that a patent has been applied for in respect of any article disposed of for value by him, and—

Unauthorised claim that patent has been applied for

(a) no such application has been made; or

(b) any such application has been refused or withdrawn,

he shall, subject to the following provisions of this section, be liable on summary conviction to a fine of ten thousand dollars.

(2) Subsection (1)(b) does not apply where the representation is made (or continues to be made) before the expiry of a period which commences with the refusal or withdrawal and which is reasonably sufficient to enable the accused to take steps to ensure that the representation is not made (or does not continue to be made).

(3) For the purposes of subsection (1), a person who for value disposes of an article having stamped, engraved or impressed on it or otherwise applied to it the words “patent applied for” or “patent pending” or anything expressing or implying that a patent has been applied for in respect of the article, shall be taken to represent that a patent has been applied for in respect of the article.

(4) In any proceedings for an offence under this section it shall be a defence for the accused to prove that he used due diligence to prevent the commission of such an offence.

76. If any person uses on his place of business, or on any document issued by him, or otherwise, the words “Intellectual Property Office” or any other words suggesting that his place of business is, or is officially connected with, the Intellectual Property Office, shall be liable on summary conviction to a fine of fifteen thousand dollars.

Misuse of title “Intellectual Property Office”.

77. (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any

Offences by corporations.

neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Time limit for prosecution.

78. No prosecution for an offence under this Act shall be commenced after the expiration of five years after the commission of the offence or one year after the discovery thereof, whichever date last occurs.

PART XVIII

REPRESENTATION

Representation.

79. (1) A person who is an Attorney-at-law shall be entitled to represent any party in any matter or proceedings before the Controller under this Act, provided—

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- (a) that the name of such a person is on the Roll of Attorneys-at-law kept under section 13 of the Legal Profession Act; and
- (b) that he resides and has a place of business in Trinidad and Tobago.

(2) Where an applicant's ordinary residence or principal place of business is outside of Trinidad and Tobago he shall be represented by an Attorney-at-law resident and practising in Trinidad and Tobago.

PART XIX

LEGAL PROCEEDINGS

Appeal against order of Controller.

80. (1) An appeal to the Court shall lie from any order or decision of the Controller under this Act or the Rules made thereunder except any of the following decisions, that is to say:

- (a) a decision falling within section 19(5);

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(b) a decision under rules which is excepted by rules from the right of appeal conferred by this section.

(2) In any such appeal or other proceedings before the Court, the Controller shall be entitled to appear or be represented and shall appear if so directed by the Court.

(3) In any appeal or other proceedings under this Act, the Court may exercise any power which could have been exercised by the Controller in the proceedings from which the appeal is brought.

(4) Save as otherwise provided in this Act, an appeal under this section shall be made within three months from the date of the order or decision, as the case may be, of the Controller or within such further time as the Court may allow in accordance with the Rules of Court.

(5) Rules of Court shall make provision for the appointment of scientific advisers to assist the Court in proceedings under this Act, for regulating the functions of such advisers and for payment of such remuneration to them as the Court may determine from time to time.

81. (1) An appeal to the Court of Appeal from an order or decision made by the Court in proceedings under this Act shall lie on any of the following grounds, but no other:

Right of appeal from order and decision of Court.

- (a) that the Court had no jurisdiction in the matter, but it shall not be competent for the Court of Appeal to entertain such ground of appeal, unless objection to the jurisdiction of the Court has been formally taken at some time during the progress of the matter before the making of the order or decision;
- (b) that the Court has exceeded its jurisdiction in the matter;
- (c) that the order or decision of the Court has been obtained by fraud;
- (d) that any finding or decision of the Court in any matter is erroneous in point of law; or

(e) that some other specific illegality not mentioned above, and substantially affecting the merits of the matter, has been committed in the course of the proceedings.

(2) On the hearing of an appeal in any matter under subsection (1), the Court of Appeal shall have power—

- (a) if it appears to the Court of Appeal that a new hearing should be held, to set aside the order or decision appealed against and order that a new hearing be held; or
- (b) to order a new hearing on any question without interfering with the finding or decision upon any other question,

and the Court of Appeal may make such final or other order as the circumstances of the matter may require.

(3) The Court of Appeal may in any matter brought on appeal before it dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred notwithstanding that it is of the opinion that any point raised in the appeal might have been decided in favour of the appellant.

Burden of proof in certain cases.

82. (1) If the invention for which a patent is granted is a process for obtaining a new product, the same product produced by a person other than the proprietor of the patent or a licensee of his shall, unless the contrary is proved, be taken in any proceedings to have been obtained by that process.

(2) In considering whether a party has discharged the burden imposed upon him by this section, the Court shall not require him to disclose any manufacturing or commercial secrets if it appears to the Court that it would be unreasonable to do so.

Extension of privilege for certain communications with Attorneys-at-law relating to patent proceedings.

83. For the removal of doubt, it is hereby declared that the privilege from disclosure conferred by law in legal proceedings in respect of communications made with an Attorney-at-law or a person acting on his behalf, or in relation to information obtained or supplied for submission to an Attorney-at-law or a person acting on his behalf,

for the purpose of any pending or contemplated proceedings before the Court, extends to such communications so made for the purpose of any pending or contemplated proceedings before the Controller under this Act or the Patent Co-operation Treaty.

84. (1) The Controller may, in proceedings before him under this Act, by order award to any party such costs as he may consider reasonable, and direct how and by whom they are to be paid.

Costs and security for costs.

(2) If any party by whom notice of any opposition is given under this Act or by whom application is made to the Controller for the grant of a licence under a patent or for the revocation of a patent, neither resides nor carries on business in Trinidad and Tobago, the Controller may require him to give security for the costs of the proceedings, and in default of such security being given, may treat the opposition or the application, as the case may be, as abandoned.

(3) Any order made under subsection (1) for the payment of costs may be enforced as if it were a money judgment passed by a Petty Civil Court if within the pecuniary jurisdiction of that Court, or, failing that, by the Court.

PART XX

GENERAL AND MISCELLANEOUS

- 85.** Neither the Minister nor any employee of the State—
- (a) shall be taken to warrant the validity of any patent granted under this Act or any treaty or international convention to which Trinidad and Tobago is a party; or
 - (b) shall incur any liability by reason of or in connection with any examination or investigation required or authorised by this Act or any such treaty or convention, or any report or other proceedings consequent on any such examination or investigation.

Immunity as regards official acts.

86. 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 or in any other prescribed manner.

Service by post.

Controller's
annual report.

87. (1) The Controller shall, before the 1st June every year, make an annual report to the Minister with respect to the operation of this Act and the discharge of his functions thereunder which shall be laid before Parliament.

(2) Every such report shall include an audited account of all fees and other monies received and paid by him under this Act during the previous year.

Saving in
respect of rights
to sell forfeited
articles.

88. Nothing in this Act affects the right of the State or any person in the employment of the State to dispose of or use articles forfeited under the laws relating to Customs and Excise.

Act binding on
State.

89. This Act is binding on the State.

Rules.

90. The Minister may, subject to a negative resolution of Parliament, make such Rules as he thinks expedient for regulating the business of the Intellectual Property Office in relation to patents and applications for patents (including international applications for patents) and for regulating all matters placed by this Act under the direction or control of the Controller.

Repeal and
transitional
provisions.
[54 of 2000].
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91. (1) Subject to the provisions of this section, Part I of the Patents and Designs Act (hereinafter referred to as "the former Act") is repealed, and section 2 and Part IV thereof insofar as they relate to patents shall not apply.

(2) Where, upon the commencement of this Act, an application made under the former Act is pending, such an application shall, notwithstanding the provisions of subsection (1), be dealt with under the former Act but the grant shall thereafter be subject to this Act.

- (3) The Controller shall, on and after the appointed day—
- (a) perform all the functions of and exercise all the powers conferred on the Registrar General in relation to patents under the former Act; and
 - (b) be the custodian of the Register of patents kept under the former Act and of the patents granted under that Act together with the certificates of registration and other relevant records.

(4) A patent granted under the former Act before the appointed day shall remain in force for twenty years from the date of the application.

(5) Nothing in this Act applies to or affects—

- (a) any proceedings for revocation or infringement of a patent, commenced before the coming into operation of this Act;
- (b) any existing licence, or any application for a licence made before the commencement of this Act.

(6) Where, before the 12th October, 2000—

- (a) a national patent, an application for which has been filed before 1st December, 1997 and has been granted under the United Kingdom Patents Act, 1977, on or after 1st December, 1994; 1977 c 37.
- (b) an European patent, an application for which has been filed before 1st December, 1997, and has been granted in respect of the United Kingdom, on or after 1st December, 1994;
- (c) an application for a national patent under the United Kingdom Patents Act, 1977 has been accorded a filing date—
 - (i) which is before 1st December, 1997; or
 - (ii) which is on or after 1st December, 1997 and which claims the priority of an application filed before 1st December, 1997 and the application is still pending;
- (d) an application for an European patent designating the United Kingdom has been accorded a filing date—
 - (i) which is before 1st December, 1997; or
 - (ii) which is on or after 1st December, 1997 and which claims the priority of an application filed before 1st December, 1997 and the application is still pending; or

(e) an international application for a patent designating the United Kingdom for a national patent and/or for an European patent has been accorded an international filing date—

- (i) which is before 1st December, 1997; or
- (ii) which is on or after 1st December, 1997 and which claims the priority of an application filed before 1st December, 1997 and the international application is still pending,

the applicant or owner of the patent or his successor in title may, within twelve months from 12th October, 2000, make an application for the grant of a patent for the same invention under the Act and such application shall be accorded the date of filing accorded to it under the United Kingdom Patents Act, 1977, the European Patent Convention or the Patent Co-operation Treaty, as the case may be, and, where such application claims the priority of an early application, it shall enjoy the same right of priority as claimed under the United Kingdom Patents Act, 1977, the European Patent Convention or the Patent Co-operation Treaty, as the case may be.

(7) Where, an application for the grant of a patent for the same invention is made in accordance with subsection (6) such application shall, notwithstanding the provisions of subsection (1), be dealt with under the former Act but the grant shall thereafter be subject to the Act.

(8) In this section—

“European Patent” means a patent granted under the Convention on the Grant of European Patents;

“European Patent Convention” means the Convention on the Grant of European Patents;

“national patent” means a patent granted in the United Kingdom.

SUBSIDIARY LEGISLATION

PATENTS RULES

ARRANGEMENT OF RULES

RULE

1. Citation.
2. Interpretation.
3. Fees, forms.
4. Language of documents and translations.
5. Indication of name, address, nationality and residence.
6. Signatures by partnerships, companies and associations.
7. Representation by Attorney-at-law.

PART I

PATENTS

8. Classification of patents.
9. Request for grant of patent.
10. Description.
11. Micro-organisms.
12. Claims.
13. Drawings.
14. Abstract.
15. Measures, terminology and signs.
16. Number of copies and physical requirements.
17. Unity of invention claims in different categories.
18. Division of application.
19. Disclosures to be disregarded for art purposes.
20. Declaration of priority and translation of earlier application.
21. Time for furnishing information concerning corresponding foreign applications, patents and other titles of protection.
22. Withdrawal and amendment of application.
23. Marking application.
24. According and notifying filing date.
25. Examination as to form.
26. Examination as to substance and decision to grant or refuse to grant patent.
27. Grant of patent; publication of reference thereto; issuance of certificate.
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RULE

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SCHEDULE I.
SCHEDULE II.

[Subsidiary]

PATENTS RULES

144/1996.

made under section 90

1. These Rules may be cited as the Patents Rules. Citation.
2. In these Rules, unless the context otherwise requires — Interpretation.
“priority date” means the filing date of the earlier application that serves or earlier applications that serve as the basis for the right of priority as provided for in section 20;
“section” refers to the specified section of the Act.
3. (1) The fees to be paid in respect of matters arising under the Act or these Rules shall be those specified in the Schedule of Fees in Schedule I. Fees, forms. Schedule I.
(2) The Forms referred to in these Rules are those set out in Schedule II. Schedule II.
(3) A requirement under these Rules to use such a form is satisfied by the use either of a replica of that form or of a form which is acceptable to the Controller and contains the information required by the form set out in that Schedule.
4. Applications shall be in the English Language, and any document forming part of an application or submitted to the Controller pursuant to the Act or these Rules and which is in a language other than English verified by the translator that the translation is to the best of his knowledge complete and faithful. Language of documents and translations.
5. (1) Names of natural persons shall be indicated by the person’s family name and given name or names, the family name being indicated before the given names and the names of legal entities shall be indicated by their full, official designations. Indication of name, address, nationality and residence.
(2) Addresses shall be indicated in such a way as to satisfy the customary requirements for prompt postal delivery at the indicated address and, in any case, shall consist of all the relevant administrative units, including the house number, if any, and addresses shall also indicate any telegraphic and telex addresses and telephone and facsimile numbers.

(3) Nationality shall be indicated by the name of the State of which a person is a national and legal entities shall indicate the name of the State under whose laws they are constituted and their registered office.

(4) Residence shall be indicated by the name of the State of which a person is a resident.

Signatures by partnerships, companies and associations.

6. (1) A document purporting to be signed for or on behalf of a partnership shall contain the names of all the partners in full and shall be signed by all the partners or by any partner qualified to sign, stating that he signs on behalf of the partnership, or by any other person who satisfies the Controller that he is authorised to sign the document and a document purporting to be signed for or on behalf of a body corporate shall be signed by a director or by the secretary or other principal officer of the body corporate, or by any other person who satisfies the Controller that he is authorised to sign the document and shall bear the seal of the body corporate and a document purporting to be signed for or on behalf of an association of persons may be signed by any person who satisfies the Controller that he is duly authorised.

(2) The Controller may, whenever he deems it necessary, request evidence of authorisation to sign.

Representation by Attorney-at-law.

7. (1) The appointment of an Attorney-at-law shall be by an authorisation of agent and shall be signed by the applicant or, if there are more than one, by each applicant.

(2) The authorisation of agent appointing an Attorney-at-law may be filed together with the application or within two months from its filing date and if the appointment is not thus made and is not in accordance with section 79 and subrule (1), any procedural steps taken by the Attorney-at-law, other than the filing of the application, shall be deemed not to have been taken.

PART I

PATENTS

8. The Controller shall apply the International Patent Classification, as adopted under the Strasbourg Agreement of March 24, 1971, and updated in its subsequent editions, for all purposes relating to the grant and publication of patents. Classification of patents.

9. (1) The request for the grant of a patent shall be made on Form No. 1 and shall be signed by each applicant. Request for grant of patent. Form No. 1.

(2) The request shall indicate each applicant's name, address, nationality and residence.

(3) Where the applicant is the inventor, the request shall contain a statement to that effect, and, where he is not, it shall indicate each inventor's name and address and be accompanied by the statement justifying the applicant's right to the patent.

(4) If the applicant is represented by an Attorney-at-law, the request shall so indicate and state the Attorney-at-law's name and address.

(5) The title of the invention shall be short and precise.

10. (1) The description shall first state the title of the invention as appearing in the request and shall— Description.

- (a) specify the technical field to which the invention relates;
- (b) indicate the background art which, as far as known to the applicant, can be regarded as useful for the understanding, searching and examination of the invention, and, preferably, cite the documents reflecting such art;
- (c) disclose the invention in such terms that it can be understood and state its advantageous effects, if any, with reference to the background art;
- (d) briefly describe the figures in the drawings, if any;
- (e) set forth in terms of examples, where appropriate, and with reference to the drawings, if any, the mode or modes for carrying out the invention referred to in section 18(3); and

(f) indicate explicitly, when it is not obvious from the description or nature of the invention, the way in which the invention is industrially applicable and the way in which it can be made and used, or, if it can only be used, the way in which it can be used.

(2) The manner and order specified in paragraph (1) shall be followed except when, because of the nature of the invention, a different manner or a different order would result in a better understanding and a more concise presentation.

Micro-organisms.

11. (1) To the extent that the contents of an application for a patent or of a patent discloses an invention which requires for its performance the use of a micro-organism which is not available to the public at the date of filing, these contents shall, pursuant to section 18(6) and this rule, be treated as disclosing the invention in a manner which is clear and complete enough for the invention to be performed by a person skilled in the art if the following conditions are satisfied:

- (a) a culture of the micro-organism has been deposited in a culture collection not later than the date of filing the application;
- (b) the application as filed gives such relevant information as is available to the applicant on the characteristics of the micro-organism; and
- (c) the name of the culture collection, the date when the culture was deposited and the accession number of the deposit are given in the description of the application.

(2) The giving of the information specified in subrule (1)(c) shall be considered as constituting the unreserved and irrevocable consent of the applicant to the culture deposited being made available to any person who, on or after the date of publication of the application, makes a valid request therefor to the culture collection with which the micro-organism is deposited and a request shall be valid if it is accompanied by the Controller's certificate authorising the release of the sample to that person.

(3) An application for a certificate referred to in subrule (2) shall be submitted to the Controller, accompanied by the prescribed fee, together with—

- (a) an undertaking not to make the culture available to any other person until the application for the patent is refused or withdrawn or deemed to be withdrawn or, if a patent is granted, until it ceases to have effect without the possibility of renewal or restoration; and
- (b) an undertaking to use the culture for experimental purposes only until the application is refused or withdrawn or deemed to be withdrawn or until the date of publication in a periodical that the patent has been granted.

(4) The Controller shall send a copy of the request referred to in subrule (2) to the applicant for, or owner of, the patent.

12. (1) The number of the claims shall be reasonable, taking into account the nature of the invention and if there are several claims, they shall be numbered consecutively in Arabic numerals. Claims.

(2) The claims shall define the invention in terms of the technical features of the invention.

(3) Whenever appropriate, claims shall contain—

- (a) a statement indicating those technical features of the invention which are necessary for the definition of the latter but which, in combination, are part of the prior art;
- (b) a characterising portion preceded by the words “characterised in that”, “characterised by”, “wherein the improvement comprises”, or any other words to the same effect stating concisely the technical features which, in combination with the features stated under paragraph (a), it is desired to protect.

(4) Claims may be written, where their understanding is thereby enhanced, in a single statement containing a recitation of a combination of several elements or steps which defines the matter for which protection is sought.

(5) Claims shall not, except where absolutely necessary, rely in respect of the technical features of the invention on references to the description or drawings and in particular, they shall not rely on such references as “as described in part . . . of the description”, or “as illustrated in figure . . . of the drawings”.

(6) No claim shall contain any drawing or graph but any claim may contain Tables and chemical or mathematical formulae.

(7) Where the application contains any drawing, any technical feature mentioned in any claim may, if the intelligibility of that claim can thereby be enhanced, include a reference sign to that drawing or to the applicable part of that drawing and such a reference sign shall be placed between square brackets or parentheses and shall not be construed as limiting the claim.

(8) Any claim submitted after the filing date of the application and which is not identified with the claims previously appearing in the application shall, at the choice of the applicant, be submitted either as an amended claim or as a new claim.

(9) The deletion of any claim previously appearing in the application shall be made by indicating the number of the previous claim followed by the word “cancelled”.

(10) Any claim which includes all the features of one or more other claims of the same category (hereinafter referred to as “dependent claim” or “multiple dependent claim,” respectively) shall preferably first refer to the other claim or claims by indicating the serial number of the other claim or the serial numbers of the other claims and then state those features claimed that are additional to the features claimed in the other claim or claims.

(11) Dependent claims or multiple dependent claims may depend on dependent claims or multiple dependent claims and multiple dependent claims may refer in the alternative or in the cumulative to the claims on which they depend.

(12) All dependent claims referring to the same other claim, and all multiple dependent claims referring to the same other claims, shall be grouped together in the most practical way possible.

13. (1) Drawings forming part of an application for a patent shall be on sheets the usable surface area of which shall not exceed 26.2 cm by 17 cm. Drawings.

(2) The sheets shall not contain frames round the usable or used surface and the minimum margins shall be as follows:

top	...	...	...	2.5 cm
left side	...	...	...	2.5 cm
right side	...	...	...	1.5 cm
bottom	...	...	...	1.0 cm.

- (3) Drawings shall be executed as follows:
- (a) without colouring, in durable, black, sufficiently dense and dark, uniformly thick and well-defined lines and strokes to permit satisfactory reproduction;
 - (b) cross-sections shall be indicated by hatching which does not impede the clear reading of the reference signs and leading lines;
 - (c) the scale of the drawings and the distinctness of their graphical execution shall be such that a photographic reproduction with a linear reduction in size to two-thirds would enable all details to be distinguished without difficulty and if, as an exception, the scale is given on a drawing, it shall be represented graphically;
 - (d) all numbers, letters and reference signs appearing in the drawings shall be simple and clear and brackets, circles and inverted commas shall not be used in association with numbers and letters;
 - (e) elements of the same figure shall be in proportion to each other, unless a difference in proportion is indispensable for the clarity of the figure;

- (f) the height of the numbers and letters shall not be less than 0.32 cm and for the lettering of drawings, the Latin and, where customary, the Greek alphabets shall be used;
- (g) the same sheet of drawings may contain several figures but where figures drawn on two or more sheets are intended to form one whole figure, the figures on the several sheets shall be so arranged that the whole figure can be assembled without concealing any part of the partial figures;
- (h) different figures shall be arranged without wasting space, clearly separated from one another and different figures shall be numbered consecutively in Arabic numerals, independently of the numbering of the sheets;
- (i) reference signs not mentioned in the description or claims shall not appear in the drawings, and vice versa, and the same features, when denoted by reference signs, shall, throughout the application, be denoted by the same signs;
- (j) the drawings shall not contain textual matter, except when required for the understanding of the drawings, a single word or words such as “water”, “steam”, “open”, “closed”, “section on AA” and in the case of electric circuits and block schematic or flow sheet diagrams, a few short catchwords;
- (k) the sheets of the drawings shall be numbered in accordance with rule 16(7).

(4) Flow sheets and diagrams shall be considered drawings for the purposes of these Rules.

Abstract.

14. (1) The abstract shall be so drafted that it can efficiently serve as a scanning tool for the purposes of searching in the particular art.

(2) The abstract shall consist of the following:

- (a) a summary of the disclosure as contained in the description, the claims, and any drawings,

indicating the technical field to which the invention pertains and drafted in a way which allows the clear understanding of the technical problem, the gist of the solution of that problem through the invention and the principal use or uses of the invention; and

(b) where applicable, the chemical formula which, among all the formulae contained in the application, best characterises the invention.

(3) The abstract shall be as concise as the disclosure permits, preferably 50 to 150 words.

(4) The abstract shall not contain statements on the alleged merits or value of the invention or on its speculative application.

(5) Each main technical feature mentioned in the abstract and illustrated by a drawing in the application shall be followed by a reference sign, placed between parentheses.

(6) The abstract shall be accompanied by the most illustrative of any drawings furnished by the applicant.

15. (1) Units of weights and measures shall be expressed in terms of the metric system.

Measures, terminology and signs.

(2) Temperatures shall be expressed in degrees celsius.

(3) Density shall be expressed in metric units.

(4) For indications of heat, energy, light, sound, and magnetism, as well as for mathematical formulae and electrical units, rules in general use shall be observed and for chemical formulae, the symbols, atomic weights, and molecular formulae, in general use, shall be employed.

(5) In general, only such technical terms, signs and symbols shall be used as are generally accepted in the art.

(6) The terminology and signs shall be consistent throughout the application.

Number of
copies and
physical
requirements.

16. (1) Subject to rule 20(7), the application and any accompanying statements or documents shall be filed in three copies, but the Controller may require the applicant to supply additional copies.

(2) All elements of the application shall be so presented as to admit of direct reproduction by photography, electrostatic processes, photo offset and micro-filming.

(3) Only one side of each sheet contained in the application shall be used.

(4) All elements of the application shall be on paper which is flexible, strong, white, smooth, non-shiny and durable.

(5) The size of the sheets shall be A4 (29.7 cm x 21 cm), although the Controller may accept sheets of other sizes.

(6) The minimum margins of sheets shall be as follows:

- (a) upper margin of each page, except the first page—20 mm;
- (b) upper margin of the first page—30 mm;
- (c) side margin adjacent to the binding—25 mm;
- (d) other side margin—20 mm;
- (e) bottom margin—20 mm.

(7) All sheets shall be numbered at the top of the sheet, in the middle, in consecutive Arabic numerals.

(8) In effecting the sequential numbering of the sheets, the elements of the application shall be placed in the following order: the request, the description, the claim, the abstract, the drawings.

(9) The sequential numbering of the sheets shall be effected by using three separate series of numbering, the first series applying to the request only and commencing with the first sheet of the request, the second series commencing with the first sheet of the description and continuing through the claims until the last sheet of the abstract, and the third series being applicable to the sheets of the drawings only and commencing with the first sheet of the drawings.

(10) The text matter of the application shall be typed but graphic symbols, chemical or mathematical formulae and certain characters, if necessary, may be handwritten or drawn.

(11) Drawings shall be executed in durable, black, sufficiently dense and dark, uniformly thick and well-defined lines and strokes without colourings.

17. (1) Where a group of inventions is claimed, the requirement of unity of invention referred to in section 18(4)(d) shall be fulfilled only if there is a technical inter-relationship between those inventions involving one or more of the same or corresponding special technical features and the expression “special technical features” shall mean those technical features which define the contribution which each of the invention as claimed, considered as a whole, makes over the prior art.

Unity of invention claims in different categories.

(2) The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternative within a single claim.

(3) An application for a patent which includes in particular—

- (a) in addition to an independent claim for a given product, the inclusion in the same application of an independent claim for a process specially adapted for the manufacture of the said product, and the inclusion in the same application of an independent claim for a use of the said product; or
- (b) in addition to an independent claim for a given process, the inclusion in the same application of an independent claim for an apparatus or means specifically designed for carrying out the said process; or
- (c) in addition to an independent claim for a given product, the inclusion in the same application of

an independent claim for a process specially adapted for the manufacture of the product, and the inclusion in the same application of an independent claim for an apparatus or means specifically designed for carrying out the process,

shall be treated as being related to a group of inventions which are so linked as to form a single inventive concept.

(4) Subject to section 18(4)(d), it shall be permitted to include in the same application two or more independent claims of the same category which cannot readily be covered by a single generic claim.

(5) Subject to section 18(4)(d), it shall be permitted to include in the same application a reasonable number of dependent claims, claiming specific forms of the invention claimed in an independent claim.

Division of application.

18. (1) A divisional application pursuant to section 19(4) shall contain a reference to the initial application.

(2) If the applicant wishes a divisional application to benefit from any priority claimed for the initial application, the divisional application shall contain a request to that effect and in such a case, the declaration of priority and the documents furnished in accordance with rule 20 for the initial application shall be deemed to relate also to the divisional application.

(3) Where the priorities of two or more earlier applications were claimed for the initial application, a divisional application may benefit only from the priority or priorities that are applicable to it.

Disclosures to be disregarded for art purposes.

19. An applicant who wishes a disclosure of the invention to be disregarded, in accordance with section 9(3), for prior art purposes, shall so indicate on the application and shall furnish, in writing, with the application or within one month of filing the application, full particulars of the disclosure.

20. (1) The declaration referred to in section 20(1) shall be made at the time of filing the application for the patent and shall indicate—

Declaration of priority and translation of earlier application.

- (a) the date of filing of the earlier application;
- (b) the number of the earlier application, subject to subrule (2);
- (c) the symbol of the International Patent Classification which has been allocated to the earlier application, subject to subrule (3);
- (d) the State in which the earlier application was filed or, where the earlier application is a regional or an international application, the State or States for which it was filed;
- (e) where the earlier application is a regional or an international application, the office with which it was filed.

(2) Where at the time of filing the declaration referred to in subrule (1) the number of the earlier application is not known, that number shall be furnished within the period of sixteen months after the priority date.

(3) Where a symbol of the International Patent Classification has not been allocated to the earlier application, or had not yet been allocated at the time of filing the declaration referred to in subrule (1), the applicant shall state this fact in the said declaration and shall communicate such symbol as soon as it has been allocated.

(4) The applicant may, at any time before the grant of the patent, amend the contents of the declaration referred to in subrule (1).

(5) The period for furnishing the certified copy of the earlier application, referred to in section 20(2), shall be three months from the date of the request by the Controller and where a copy has already been furnished for another application, the applicant may respond by making a reference to that other application.

(6) Where the earlier application is in a language other than English, the applicant shall, within six months from the date of the aforementioned request, furnish an English translation of the earlier application.

(7) Unless the Controller requests otherwise, the earlier application and any translation thereof shall be filed in one copy.

Time for furnishing information concerning corresponding foreign applications, patents and other titles of protection.

21. (1) The time limits to be specified for furnishing the information requested under section 21 shall not be less than two or more than six months from the date such a request is made and upon a reasoned request by the applicant, the Controller may extend such time limit.

(2) If the applicant replies that the documents requested under section 21 are not yet available, the Controller may suspend the procedure for the examination of the application until such time as the documents are furnished.

Withdrawal and amendment of application.

22. (1) The withdrawal of an application, pursuant to section 27, shall be made by written declaration submitted to the Controller and signed by each applicant.

(2) The application fee shall not be refunded if the application is withdrawn.

(3) Any amendment under section 26(1) shall be made and any amendment under section 26(4) shall be requested together with the payment of the prescribed fee.

Marking application. Form No. 1. Schedule II.

23. (1) Upon receipt, the Controller shall mark, on each document making up the application, the actual date of receipt and the application number consisting of the letters TT, slant, the letter a¹, slant, the numbers of the year in which the initial papers were received, slant, and a five-digit number allotted in the sequential order in which applications are received, and where any corrections or other later filed documents are received on different dates, the Controller shall also mark their actual date of receipt in the appropriate place of the request for grant of the patent (From No. 1).

(2) The application number allotted under subrule (1) shall be quoted in all subsequent communications concerning the application.

24. (1) The Controller shall examine whether the application fulfils the requirements of section 19(1). According and notifying filing date.

(2) The invitation to file any correction, under section 19(2), shall be in writing, it shall specify the correction or corrections required and request that these be filed within two months from the date of the invitation, together with the payment of the prescribed fee.

(3) Once the Controller accords a filing date, he shall notify the applicant in writing and if the application is treated as if it had not been filed, under section 19(2), the Controller shall notify the applicant in writing, specifying the reasons.

25. (1) In addition to the requirements of section 23(2) in conjunction with section 18(1) and (2) and the provisions of these Rules pertaining thereto, the requirements of sections 21 and 79 and rules 4 to 7 and 9 to 16, to the extent applicable, shall be considered formal requirements for the purposes of the Act. Examination as to form.

(2) Where the Controller finds that the conditions referred to in subrule (1) are not fulfilled, he shall invite the applicant, in writing, to file the required correction within two months from the date of the invitation, together with the payment of the prescribed fee.

(3) Where no abstract is provided, the Controller shall invite the applicant to correct the deficiency either by providing an abstract or by paying the prescribed fee for the preparation of the abstract by the Controller himself.

(4) Where the applicant does not comply with the invitation to correct deficiency, or where, despite the corrections submitted by the applicant, the Controller is of the opinion that the conditions referred to in section 23(2) are not fulfilled, he shall reject the application pursuant to section 23(3) and notify the applicant, in writing, stating the reasons.

(5) Refusal of the application shall not affect its filing date which shall remain valid.

Examination as to substance and decision to grant or refuse to grant patent.

26. (1) For purposes of the examination under section 24, the Controller may, subject to the payment of the prescribed fee, transmit the application, together with all relevant documents, to an examining authority with which an arrangement to this effect has been concluded, requesting a search and examination report.

(2) Where, taking due account of the conclusions of the search and examination report referred to in subrule (1), if any, the Controller is of the opinion, that the conditions referred to in section 24 are not fulfilled, he shall notify the applicant, in writing, inviting him several times if necessary, to submit his observations and, where applicable, to amend or divide his application, within a specified period, and such specified period shall not be less than two or more than six months from the date of the invitation.

(3) The invitation shall be made on Form No. 2 and it may be made several times if necessary.

(4) Any amendment under subrule (2) shall be made together with the payment of the prescribed fee.

(5) Where the applicant does not comply with the said invitation or where, despite any observation, amendment or division submitted by the applicant, the Controller, taking due account of the conclusions of the search and examination report referred to in subrule (1), if any, is of the opinion that the conditions referred to in section 24 are not fulfilled, he shall refuse to grant the patent.

(6) Where the Controller, taking due account of the conclusions of the search and examination report referred to in subrule (1), if any, is of the opinion that the conditions referred to in subrule (1) are fulfilled, he shall grant the patent in accordance with section 25(2) and rule 27.

(7) The Controller shall notify the applicant, in writing, of his decisions to grant or to refuse to grant a patent, attaching a copy of the search and examination report, if any, upon which the

decision is based and, in the case of a refusal, stating the reasons therefor and in the case of a decision to grant a patent, requesting the applicant to pay the grant and publication fee within three months from the date of the notification.

27. (1) The Controller shall allot to each patent he grants a number (to be known as “the publication number of the patent”) in the sequential order of grant.

Grant of patent; publication of reference thereto; issuance of certificate.

(2) The patent shall be granted on Form No. 3 and shall contain, in addition to the information indicated in subrule (3), the date of publication of the patent, the documents or references cited of the prior art, the description, the claims and the drawings if any.

(3) The publication of the notice, under section 28(1) and (2), of the grant of the patent shall include:

- (a) the number of the patent;
- (b) the name and address of the owner of the patent;
- (c) the name and address of the inventor, except where he has asked not to be named in the patent;
- (d) the name and address of the Attorney-at-law if any;
- (e) the filing date;
- (f) if priority has been claimed and the claim has been accepted, a statement of the priority, the priority date and the name of the country or countries in which or for which the earlier application was filed;
- (g) the effective date of grant of the patent;
- (h) the title of the invention;
- (i) the abstract;
- (j) the most illustrative of the drawings, if any; and
- (k) the symbol of the International Patent Classification.

(4) The certificate of grant, issued in accordance with section 28(3), shall be issued on Form No. 4, shall be signed by the Controller and shall contain—

- (a) the number of the patent;
- (b) the name and address of the owner of the patent;

- (c) the filing date and, where applicable, priority date of the application;
- (d) the effective date of grant of the patent; and
- (e) the title of the invention.

Use of patented invention for services of the State.

28. (1) The Minister shall, before making a decision under section 48, consult the Controller, and give the owner of the patent, beneficiaries of non-voluntary licences, and any other persons whose participation he considers useful, at least 21 days' written notice of the date on which they may be heard and the owner of the patent shall give all licensees written notice of the hearing and they shall have the right to participate therein.

(2) The Minister shall make his decision, after the hearing, if any, in writing, stating the grounds upon which it is based and the terms of use, and shall transmit the decision to the Controller.

(3) The Controller shall record and publish the decision of the Minister and, in writing, notify the owner of the patent and the other participants in the hearing.

(4) If the decision of the Minister is the subject of an appeal, the Registrar of the Court shall notify the Controller of the Court's decision once it becomes final, and the Controller shall record the decision and publish it.

Annual fees.

29. (1) Upon payment of an annual fee in accordance with section 30(1), the Controller shall, within two weeks from the date payment is received, furnish or send to the applicant or to the owner of the patent a receipt of payment.

(2) The Controller shall record and publish a notification of the lapse of a patent.

(3) Annual fees shall not be refundable.

Surrender of patent or claim.

30. (1) The notice of an offer by an owner of a patent to surrender his patent, or a claim or claims therein, under section 31, shall be given in writing, stating the reasons for making this offer and stating whether or not an action is pending before the Court for infringement or for revocation of the patent and the offer shall be published by the Controller in the periodical.

(2) At any time within three months from the publication, in the periodical of a notice of an offer to surrender, any person may give to the Controller notice of opposition to the surrender, a copy of which the Controller shall send to the owner of the patent.

(3) Such notice of opposition shall be accompanied by a copy thereof and be supported by a statement in duplicate setting out fully the facts upon which the opponent relies and the relief which he seeks and the Controller shall send a copy of the notice and the statements to the owner of the patent.

(4) Within three months of the receipt of the copy, the owner of the patent shall, if he wishes to continue with the surrender, file a counter-statement, in duplicate, setting out fully the grounds upon which the opposition is resisted and the Controller shall send a copy of the counter-statement to the opponent.

(5) The Controller may give such directions as he may think fit with regard to the subsequent procedure.

31. (1) The Controller shall cause to be entered in the register in respect of every patent, in addition to the information indicated in rule 27(3)—

Entries in the register.

- (a) the address for service;
- (b) the date on which the patent expired or was surrendered or revoked;
- (c) any change in name, address, address for service and ownership in accordance with rules 32 and 33;
- (d) the fact that a licence contract has been concluded and recorded in the special register pursuant to section 45 and rule 37;
- (e) the grant of any compulsory licence with respect to the patent pursuant to section 46 and the terms, variation of terms and termination thereof; and
- (f) any authorisation by the Minister pursuant to section 48 and the terms, variation of terms and termination thereof.

(2) The Controller may at any time enter in the register such other particulars as he may think fit.

Change of name, address or address for service.

32. (1) A request by the owner of a patent or an applicant for a patent for the alteration of a name, nationality, address or address for service on record in respect of his patent or application shall be made in writing and shall be accompanied by the prescribed fee.

(2) Before acting on a request to alter a name or nationality, the Controller may require such proof of the alteration as he thinks fit.

Change in ownership.

33. (1) An application to register, or to give notice to the Controller of, any transaction, instrument or event to which section 35 applies shall be made on Form No. 5 and be accompanied by the prescribed fee.

(2) Unless the Controller otherwise directs, an application under subrule (1) shall be accompanied by—

- (a) a certified copy of any document which establishes the transaction, instrument or event; or
- (b) a certified copy of such extracts from such documents as suffice to establish the transaction, instrument or event.

(3) In order to be accepted for recordal purposes, an agreement assigning the ownership of the patent application or the patent must contain at least the number and date of the patent application or the patent, the title of the invention and the names, addresses, nationalities, and signatures of the assignor and assignee.

(4) The publication of the change in ownership shall specify—

- (a) the number of the application or registration concerned;
- (b) the filing date, the priority date, if any, and the date of grant;
- (c) the owner and the new owner; and
- (d) the nature of the change of ownership.

(5) If the Controller is satisfied that the request should be allowed, he shall cause the patent or application therefor and, where the ownership has been recorded in the register, the register to be altered accordingly.

34. Entries in the register shall be made available, subject to the payment of the prescribed fee, for inspection by the public between the hours of 10.00 a.m., and 4.00 p.m., on weekdays other than Saturdays and public holidays.

Inspection of register.

35. Request pursuant to section 36 for certified copies or copies of extracts from a register or for copies of patents, patent applications or other documents shall be made to the Controller in writing and shall be subject to payment of the prescribed fee.

Request for extracts from the register and for copies of documents.

36. (1) A request for correction of an error in the register or in any document filed with the Controller in connection with registration shall be made in writing, stating the desired correction, and shall be accompanied by the prescribed fee.

Request for correction of errors.

(2) A request for the correction of an error of translation or transcription, a clerical error or mistake in the claims, description or drawings of a patent or application for a patent or any document filed in connection with a patent or such an application shall be made in writing, stating the desired correction, and shall be accompanied by the prescribed fee.

(3) Where such a request relates to the claims, description or drawings, no correction shall be made therein unless the correction is obvious in the sense that it is immediately evident that nothing else would have been intended than what is offered as the correction.

(4) Where the correction of a patent is requested, the Controller may require notice of the proposed correction to be advertised and the advertisement shall be made by publication of the request and the nature of the proposed correction.

(5) Any person may, at any time within three months after the date of the publication, give, to the Controller, notice of opposition to the request, in duplicate, and the notice of opposition shall be supported by a statement in duplicate setting out fully the facts on which the opponent relies and the relief which he seeks.

(6) The Controller shall send a copy of the notice and the statement to the person making the request who, if he desires to proceed with his request, shall within three months of the receipt of the copies file a counter-statement in duplicate setting out fully the grounds on which he contests the opposition and the Controller shall send a copy of the counter-statement to the opponent.

(7) The Controller may give such directions as he may think fit with regard to the subsequent proceedings.

Special register.

37. The Controller shall maintain a special register in which he shall register licence contracts.

Inspection of special register and files.

38. The special register and the file relating to a licence agreement may be inspected and extracts obtained therefrom only with the written permission of the licensor and licensee.

Submission of licence contract.

39. (1) The petition for registration of a licence contract under section 40 shall be made in writing.

(2) The petition shall be accompanied by—

- (a) copies of all the documents constituting the contract, including all amendments, annexes, riders, and other supplements thereto or modifications thereof;
- (b) copies of all other documents or material relating to the contract necessary for the interpretation or understanding thereof; and
- (c) the prescribed fee.

Amendment of specification after grant.

40. (1) An application to the Controller for leave to amend the description, claims or drawings of a patent shall be accompanied by a document clearly showing the amendment sought and the prescribed fee and the Controller may request the applicant to file a copy of the unamended text of the description or claims or of the drawings on which the amendment is shown in red ink.

(2) The application shall be advertised by publication of the application and the nature of the proposed amendment in a periodical and in such other manner, if any, as the Controller may direct.

(3) Any person wishing to oppose the application to amend shall, within two months from the date of the advertisement in a periodical, give notice to the Controller.

(4) Such notice shall be accompanied by a copy thereof and be supported by a statement in duplicate setting out fully the facts upon which the opponent relies and the relief which he seeks and the Controller shall send a copy of the notice and of the statement to the applicant.

(5) Within the period of two months beginning on the date when such copies are sent to him the applicant shall, if he wishes to continue with the application, file a counter-statement in duplicate setting out fully the grounds upon which the opposition is resisted and the Controller shall send a copy of the counter-statement to the opponent.

(6) The Controller may give such direction as he may think fit with regard to the subsequent procedure.

41. (1) Where the provisions of section 61(1) apply only to some of the claims or some parts of a claim and no amendment of the specification by the owner of the patent pursuant to section 61(2) is required, such claims or parts of a claim shall be revoked. Revocation.

(2) The patent owner shall, in writing, notify any licensee of any Court proceeding instituted for the revocation of the patent and the person requesting revocation shall so notify any beneficiaries of non-voluntary licences granted under section 46 and, where the ground of invalidity invoked is that the patent owner is not the inventor or his successor in title, the person alleged to have the right to the patent shall also be notified.

42. (1) For the purposes of these Rules, “designate”, “designated Office”, “elect”, “elected Office”, “international filing date”, “international preliminary examination” and “receiving Office” have the same meaning as in the Patent Co-operation Treaty. International applications under the Patent Co-operation Treaty.

(2) An international application designating Trinidad and Tobago shall be treated as a patent application under the Act having as its filing date the international filing date accorded under the Patent Co-operation Treaty.

(3) Notwithstanding the provisions of the Act and these Rules, the requirements in relation to the filing and contents of an international application, and to the fees payable in respect of the filing of such an international application, shall be those which apply under the Patent Co-operation Treaty and the Regulations and Administrative Instructions thereunder.

(4) An international application filed with the Intellectual Property Office as receiving Office shall be filed in English and the prescribed transmittal fee shall be paid to the Intellectual Property Office within one month from the date of receipt of the international application.

(5) The applicant in respect of an international application designating Trinidad and Tobago shall, before the expiration of the time limit applicable under subrule (6) or (7)—

- (a) pay the prescribed fee to the Intellectual Property Office; and
- (b) if the international application was not filed in, and has not been published under the Patent Co-operation Treaty as a translation into English, file with the Intellectual Property Office a translation of the international application, containing the prescribed contents, into English.

(6) Where Trinidad and Tobago was not, before the expiration of 19 months from the priority date referred to in Article 2(xi) of the Patent Co-operation Treaty, elected for the purposes of international preliminary examination—

- (a) the time limit referred to in subrule (5) shall be 21 months from that date;
- (b) the translation referred to in subrule (5) shall contain a translation of—
 - (i) the description;
 - (ii) the claims (if amended under Article 19 of the Patent Co-operation Treaty, as so amended);
 - (iii) any text matter of the drawings; and
 - (iv) the abstract.

(7) Where Trinidad and Tobago was, before the expiration of 19 months from the priority date referred to in Article 2(xi) of the Patent Co-operation Treaty, elected for the purposes of international preliminary examination—

- (a) the time limit referred to in subrule (5) shall be 31 months from that date;
- (b) the translation referred to in subrule (5) shall contain a translation of—
 - (i) the description (if amended by any amendments annexed to the international preliminary examination report, as so amended);
 - (ii) the claims (if amended by any amendments annexed to that report, as so amended);
 - (iii) any text matter of the drawings (if amended by any amendments annexed to that report, as so amended); and
 - (iv) the abstract.

(8) Where the applicant fails to file a translation of an amendment referred to in subrule (5) or (6), the Controller shall invite the applicant to furnish the missing translation within two months from the date of the invitation and if the missing translation is not furnished within that time limit, the amendment shall be disregarded for the purposes of the further processing of the international application by the Intellectual Property Office.

(9) If the applicant does not comply with the requirements of subrule (5), the international application shall be considered withdrawn.

(10) Notwithstanding section 21, where the Intellectual Property Office acts as an elected Office in relation to an international application and receives the international preliminary examination report, the Controller shall not request the applicant to furnish copies, or information on the contents, of any papers connected with the examination relating to the same international application in any other elected Office.

(11) Any annual fee which falls due under section 30(1) in relation to an international application in which Trinidad and Tobago is designated need not be paid until the expiration of the time limit applicable under subrule (6) or (7).

PART II

UTILITY CERTIFICATES

Application of provisions relating to patents.

43. (1) Part I of these Rules shall apply, *mutatis mutandis*, to utility certificates, subject to the following exceptions:

- (a) the letter A, in rule 23, shall be read as the letter U;
- (b) the reference, in rule 41, to section 60 shall be read as a reference to section 67.

(2) A request, under section 68, for the conversion of an application for a patent into an application for a utility certificate, or vice versa, shall be signed by the applicant and shall be accompanied by the prescribed fee.

(3) The Controller shall, within two months of the receipt of the request, notify the applicant of his decision thereon, in writing, and where he refuses the request he shall state the reasons.

PART III

MISCELLANEOUS

Address for service.

44. (1) There shall be furnished to the Controller—

- (a) by every applicant for the grant of a patent, an address for service in Trinidad and Tobago for the purpose of his application; and
- (b) by every person (including the applicant for, or the owner of, a patent, as the case may be) concerned in any proceedings to which these Rules relate, an address for service in Trinidad and Tobago,

and the address so furnished or, where another address (being an address in Trinidad and Tobago) has been furnished in place thereof, that address shall be treated for the purposes of that application for those proceedings, as appropriate, as the address of that applicant or, as the case may be, of that person.

(2) Where an Attorney-at-law has been appointed, the address of the Attorney-at-law shall, for all purposes connected with the Act and these Rules, be treated as the address to which communications to the person or persons who appointed the Attorney-at-law shall be transmitted.

45. When the last day for doing any act or taking any proceedings falls on a day when the Controller's Office is not open to the public for business, it shall be lawful to do the act or to take the proceeding on the day when the Controller's Office is next open for business. Excluded days.

46. (1) Before exercising adversely to any person any discretionary power given to the Controller by the Act or these Rules, the Controller shall notify such person, in writing, of the opportunity to be heard thereon, and indicating a time limit, which shall not be less than one month, for filing a request for a hearing. Hearing.

(2) The request for a hearing shall be in writing and shall be subject to payment of the prescribed fee.

(3) Upon receiving such request, the Controller shall give the person applying, and any other interested persons, at least two weeks notice, in writing, of the date and time of the hearing.

47. (1) Any notice, application or other document sent to the Controller by mail shall be deemed to have been given, made or filed at the time when it would be delivered in the ordinary course of the mail and in proving such sending, it shall be sufficient to prove that the letter containing such notice, application or other document was properly addressed and sent by registered mail. Service by mail.

(2) Subrule (1) does not apply to the accordance of the filing date.

Extension of time limit.

48. (1) The time or periods prescribed by these Rules for doing any act or taking any proceedings thereunder, other than times or periods prescribed in the provisions mentioned in subrule (2), may be extended by the Controller if he thinks fit, upon such notice to the parties and upon such terms as he may direct, and such extensions may be granted although the time or period for so doing such act or taking such proceeding has already expired.

(2) The provisions referred to in subrule (1) are rules 1(1), 20(1), 30(2), 36(2) and 40(3).

Directions as to furnishing of documents.

49. At any stage of any proceedings before the Controller, he may direct that such documents, information or evidence as he may require be furnished within such period of time as he may fix.

Corrections of irregularities.

50. Any irregularity in procedure before the Controller may be rectified, on such terms as he may direct.

Dispensation by the Controller.

51. Where, under these Rules, any person is to do any act or thing, or any document or evidence is required to be produced or filed, and it is shown to the satisfaction of the Controller that from any reasonable cause that person is unable to do that act or thing, or that that document or evidence cannot be produced or filed, the Controller may, upon the production of such evidence and subject to such terms as he thinks fit, dispense with the doing of any such act or thing, or the production or filing of such document or evidence.

Hours of business.

52. The Controller's Office shall be open to the public from Monday to Friday inclusive, each week, between the hours of 8.30 a.m., and 4.00 p.m., for all classes of business.

Evidence.

53. (1) Where under these Rules evidence may be filed, it shall be by statutory declaration or affidavit.

(2) The Controller may, if he thinks fit, in any particular case, take oral evidence in lieu of or in addition to such evidence and shall allow any witness to be cross-examined on his affidavit or declaration.

54. (1) Any statutory declaration or affidavit filed under the Act or these Rules shall be made before any officer authorised by law in any part of Trinidad and Tobago to administer an oath for the purpose of any legal proceedings.

Statutory
declarations and
affidavits.

(2) Statutory declarations or affidavits made outside Trinidad and Tobago shall be made before a Trinidad and Tobago Consul or Notary Public.

55. Particulars of patents and other proceedings under the Act and any other information required to be published under the Act or these Rules shall be published, in accordance with the direction of the Controller, in at least one of the periodicals referred to in section 2.

Publication.

[Subsidiary]

Patents Rules

[Rule 3(1)].

SCHEDULE I

FEES

MATTER OR PROCEEDING	AMOUNT OF FEE	FORM
Application for a patent [section 18(1) and (2); rule 9]	\$2,000.00	Form No. 1
Each divisional application for a patent [section 19(4); rule 18]	\$1,500.00	Form No. 1
Application for a utility certificate [sections 18(1) and (2), 64; rules 9, 43(1)]	\$1,000.00	Form No. 1
Each divisional application for a utility certificate [sections 19(4), 64; rules 9, 43(1)] ...	\$750.00	Form No. 1
Correction of application to comply with requirements for according filing date [section 23(3); rule 25(2)]	\$250.00	
Correction of application to comply with formal requirements [section 23(3); rule 25(2)]... ..	\$250.00	
Preparation of abstract by Controller [rule 25(2)] ...	\$1,500.00	
Amendment of application at instance of applicant [section 26(1)]	\$500.00	
Amendment of application on invitation of Controller [section 25(1); rule 26(2)]	\$250.00	Form No. 2
Fee for search and examination carried out by an examining authority [section 24(1); rule 26(1)] ...	\$1,500.00 plus amount payable to examining authority	
Grant and publication fee (rule 27)	\$500.00 plus amount payable to publisher	
Annual fees for patents: [sections 29, 30(1)]		
2nd year	\$200.00	
3rd year	\$400.00	
4th year	\$400.00	
5th year	\$600.00	
6th year	\$900.00	
7th year	\$1,200.00	
8th year	\$1,600.00	
9th year	\$2,000.00	
10th year	\$2,400.00	

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016

FEES—Continued

MATTER OR PROCEEDING	AMOUNT OF FEE	FORM
11th year	\$3,200.00	
12th year	\$4,200.00	
13th year	\$5,200.00	
14th year	\$6,200.00	
15th year	\$7,200.00	
16th year	\$8,400.00	
17th year	\$9,600.00	
18th year	\$10,800.00	
19th year	\$12,000.00	
20th year	\$13,200.00	
Surcharge for late payment of annual fee [section 30(1)]	10% of the overdue fee	
Request for conversion of a patent application into an application for a utility certificate and vice versa [section 68; rule 43(2)]	\$200.00	
Application to register, or to give notice of, transaction, etc., (section 35; rule 33)... ..	\$150.00	Form No. 5
Request for recordal of change in ownership (section 35; rule 33)	\$150.00	Form No. 5
Submission of licence contract for recordal [section 45(2); rule 37]... ..	\$150.00	
Inspection of register (for every quarter of an hour or part thereof) (rule 34)	\$20.00	
Inspection of special register and file relating to licence contract (for every quarter of an hour or part thereof) (rule 38)	\$20.00	
Certified copies of documents (rule 35) ...	\$50.00 plus \$5.00 per page	
Request for correction of an error (rule 36) ...	\$150.00	
Request for extension of time limit (rule 48) ...	\$150.00	
Request for hearing (rule 46)	\$150.00	

[Rule 3(2)
and 23(1)].

SCHEDULE II

FORM NO. 1

INTELLECTUAL PROPERTY OFFICE, TRINIDAD AND TOBAGO	
<p>Form No. 1 PATENTS ACT</p> <p>REQUEST FOR GRANT OF PATENT OR UTILITY CERTIFICATE</p> <p>To: The Controller Intellectual Property Office</p>	<p style="text-align: center;">For Official Use</p> <p>Date of Receipt by Intellectual Property Office:</p> <p>APPLICATION No.:</p> <p style="text-align: center;">(Office's Stamp)</p> <hr/> <p>FILING DATE:</p> <p>Applicant's or Representative's File Reference:</p>
<p>THE APPLICANT(S) REQUEST(S) <input type="checkbox"/> THE GRANT OF A PATENT</p> <p style="text-align: right; margin-left: 150px;"><input type="checkbox"/> THE GRANT OF A UTILITY CERTIFICATE</p> <p>IN RESPECT OF THE FOLLOWING PARTICULARS:</p> <p>I. TITLE OF INVENTION:</p>	
<p>II. APPLICANT(S)*</p> <p>Additional information is contained in supplemental box <input type="checkbox"/></p> <p>Name(s):</p>	
<p>Address(es):</p>	
<p>Nationality/nationalities:</p>	
<p>Country/countries of residence or principal place(s) of business:</p>	
<p>Tel. No.: Telegraphic Address(es): Telex No.: Fax No.:</p>	
<p><small>*The data concerning each applicant must appear in this box or, if the space is insufficient, in the supplemental box.</small></p>	

(Form No. 1, first page)

UNOFFICIAL VERSION

UPDATED TO 31ST DECEMBER 2016

FORM NO. 1—Continued

Address for service in Trinidad and Tobago:*
III. AGENT The following agent has been appointed by the applicant(s) in the authorisation of agent <input type="checkbox"/> accompanying this Form <input type="checkbox"/> to be filed within two months from the filing of this Form Name:
Address:
Tel. No.: Telegraphic Address(es): Telex No.: Fax No.:
IV. INVENTOR <input type="checkbox"/> The inventor is the applicant Additional information is contained in supplemental box <input type="checkbox"/> If inventor is not the applicant: Name:
Address:
The statement justifying the applicant's right accompanies this Form <input type="checkbox"/>
V. DIVISIONAL APPLICATION This application is a divisional application <input type="checkbox"/> . The benefit of the <input type="checkbox"/> filing date <input type="checkbox"/> priority date of the initial application is claimed in as much as the subject matter of the present application is contained in the initial application identified below. Initial Application No.: Date of filing of initial application:

* Where an Attorney-at-law has been appointed, his address shall be treated as the address to which communications shall be transmitted [Rule 44(2)].

(Form No. 1, second page)

FORM NO. 1—Continued

<p>VI. DISCLOSURES TO BE DISREGARDED FOR PRIOR ART PURPOSES</p> <p><input type="checkbox"/> Disclosure occurred not more than one year before the filing date or priority date of the present application by reason or in consequence of acts of the applicant or his predecessor in title.</p> <p><input type="checkbox"/> of an abuse committed by a third party with regard to the rights of the applicant or his predecessor in title.</p> <p><input type="checkbox"/> Additional information is contained in a statement accompanying this Form.</p>	
<p>VII. PRIORITY DECLARATION (if any)</p> <p>The priority of (an) earlier application(s) is claimed as follows: <input type="checkbox"/></p> <p>The priority of more than one earlier application is claimed; the data are indicated in the supplemental box: <input type="checkbox"/></p>	
<p>Country (if the earlier application is a regional or international application, indicate the office with which and the countries for which it was filed):</p>	<p>Filing Date:</p> <hr/> <p>Application No.:</p> <hr/> <p>Symbol of the International Patent Classification:</p> <p><input type="checkbox"/> not yet allocated</p>
<p>The certified copy of the earlier application <input type="checkbox"/> accompanies this Form</p> <p><input type="checkbox"/> will be furnished upon request by the Controller, as prescribed by Rule 20(5)</p> <p><input type="checkbox"/> has already been furnished with application No. [see Rule 20(5)]</p>	
<p>The English translation of the earlier application <input type="checkbox"/> accompanies this Form</p> <p><input type="checkbox"/> will be furnished upon request, as prescribed by Rule 20(6)</p>	

(Form No. 1, third page)

FORM NO. 1—Continued

VIII. SUPPLEMENTAL BOX*

*Use this box if any of the boxes is not large enough to contain information to be furnished. Indicate the boxes continued in this box by their Roman numerals and title [e.g., "II. APPLICANT(S) (continued)"].

(Form No. 1, fourth page)

FORM NO. 1 — Continued

IX. CHECK LIST (TO BE FILLED IN BY THE APPLICANT)	
<p>A. This application contains the following:</p> <p>1. request sheet(s)</p> <p>2. description sheet(s)</p> <p>3. claim(s)..... sheet(s)</p> <p>4. abstract sheet(s)</p> <p>5. drawing(s) sheet(s)</p> <p>Total <input style="width: 40px;" type="text"/> sheets</p>	<p>B. This Form, as filed, is accompanied by the items ticked below:</p> <p><input type="checkbox"/> separate signed authorisation of agent</p> <p><input type="checkbox"/> statement justifying the applicant's right</p> <p><input type="checkbox"/> statement that certain disclosures be disregarded</p> <p><input type="checkbox"/> priority document(s) [certified copy of earlier application(s)]</p> <p><input type="checkbox"/> English translation of earlier application(s) on which priority declaration is based</p> <p><input type="checkbox"/> application fee</p> <p><input type="checkbox"/> other document(s) (specify)</p>
<p>C. Figure number.....of the drawings (if any) is suggested to accompany the abstract for publication</p>	
<p>X. SIGNATURE(S)..... <i>Date</i></p>	
<p>Type name(s) under signature(s).</p> <p>Indicate whether applicant or agent.</p>	
<p>TO BE FILLED IN BY THE CONTROLLER</p>	
<p>1. Date of receipt of corrections or later filed documents completing the application:</p>	
<p>2. Date fees received:</p>	

(Form No. 1, fifth and last page)

FORM NO. 2

[Rules 3(2) and 26(3)].

INTELLECTUAL PROPERTY OFFICE, TRINIDAD AND TOBAGO	
Form No. 2 PATENTS ACT	
NOTIFICATION OF NON-COMPLIANCE WITH SUBSTANTIVE REQUIREMENTS AND INVITATION TO SUBMIT OBSERVATIONS AND/OR AMENDED APPLICATION FOR GRANT OF PATENT	For Official Use Fee received on: Applicant's or Representative's File Reference:
In the matter of Patent Application No. the Controller hereby notifies the applicant(s) that the following substantive requirements have not been fulfilled with respect to the above-identified application for the following reasons: *	
The applicant(s) is/are hereby invited to submit, within (specified period †), his/their observations and, where applicable, an amended application. The amendment shall be made to the Controller, together with the prescribed fee.	
SIGNATURE <div style="display: flex; justify-content: space-around;"> <i>The Controller</i> <i>Date</i> </div>	
*Continue on a separate sheet, if space provided is insufficient. †Insert time limit in accordance with Rule 26(2).	


(Form No. 2, only page)

[Subsidiary]

Patents Rules


[Rules 3(2)
and 27(2)].

FORM NO. 3

<p>(19) Intellectual Property Office, Trinidad and Tobago</p> <div style="text-align: center;"></div>	<p>(11) Publication Number:</p> <p>(45) Publication Date:</p> <p>(51) IPC:</p>
<p>(12) PATENT</p>	
<p>(21) Application Number:</p> <p>(22) Filing Date:</p> <p>(31) Priority Number:</p> <p>(32) Priority Date:</p> <p>(33) Priority Country:</p>	<p>(73) Owner(s):</p> <p>(72) Inventor(s):</p> <p>(74) Agent:</p>
<p>(54) Title:</p>	
<p>(57) Abstract:</p>	

(Form No. 3 only page)

FORM NO. 3A

(19) Intellectual Property Office, Trinidad and Tobago 	(11) Publication Number: (45) Publication Date:
(12) UTILITY CERTIFICATE	
(21) Application Number: (22) Filing Date: (31) Priority Number: (32) Priority Date: (33) Priority Country:	(73) Owner(s): (72) Inventor(s): (74) Agent:
(54) Title:	
(57) Abstract:	

(Form No. 3A only page)

[Subsidiary]

Patents Rules

[Rules 3(2)
and 27(4)].

FORM NO. 4

INTELLECTUAL PROPERTY OFFICE, TRINIDAD AND TOBAGO
Form No. 4 PATENTS ACT CERTIFICATE OF GRANT OF PATENT/ UTILITY CERTIFICATE*
In accordance with section 28(3) of the Patents Act, it is hereby certified that a patent/utility certificate* having the number has been granted to: Name: Address: on (date), in respect of an invention disclosed in an application for that patent/utility certificate* having the following: filing date: priority date: being an invention for <i>(title)</i> Signature <i>The Controller</i> <i>Date</i>
*Delete which does not apply.

(Form No. 4, only page)

FORM NO. 5

[Rules 3(2)
and 33(1)].

INTELLECTUAL PROPERTY OFFICE, TRINIDAD AND TOBAGO	
Form No. 5 PATENTS ACT APPLICATION TO REGISTER, OR GIVE NOTICE OF TRANSACTION, ETC.; RECORDING OF CHANGE IN OWNERSHIP To: The Controller Intellectual Property Office	For Official Use Received on: Applicant's or Representative's File Reference:
I. IN THE MATTER OF:	
Patent Application No.:	Filing Date:
Application for Utility Certificate No.:	Filing Date:
Patent No.:	Date of Grant:
Utility Certificate No.:	Date of Grant:
II. APPLICATION TO REGISTER, OR GIVE NOTICE OF TRANSACTION, ETC. PERSON(S) MAKING THE APPLICATION:	
Name(s):	
Address(es):	
III. REQUEST FOR RECORDING OF CHANGE IN OWNERSHIP The Controller is hereby requested to record the change in ownership of the above-identified* The present applicant(s)/owner(s) † is/are identified below. The new applicant(s)/new owner(s) † is/are identified below.	
FORMER APPLICANT(S) / OWNER(S): †	
Name(s):	
Address(es):	
*Indicate application or title concerned. †Delete whichever does not apply.	

(Form No. 5, first page)

FORM NO. 5—Continued

NEW APPLICANT(S)/NEW OWNER(S)*			
Name(s):			
Address(es):			
Address for service in Trinidad and Tobago:			
Nationality/nationalities:			
Country/countries of residence or principal place(s) of business:			
Tel. No.:	Telegraphic Address(es):	Telex No.:	Fax No.:
<p>IV. ADDITIONAL INFORMATION</p> <p>The following items accompany this Form:</p> <p><input type="checkbox"/> The original or a certified copy of the document evidencing the change of ownership, signed by or on behalf of the contracting parties</p> <p><input type="checkbox"/> other documents evidencing the change in ownership (specify)</p> <p><input type="checkbox"/> fees</p> <p><input type="checkbox"/> other (specify)</p>			
<p>V. SIGNATURES</p> <p>..... (Person(s) making the application†) <i>(Date)</i></p> <p>..... [New Applicant(s)/New Owner(s)‡] <i>(Date)</i></p> <p>..... [Former Applicant(s)/Owner(s)‡] <i>(Date)</i></p>			
<p>*Delete whichever does not apply. †Type name under signature(s). ‡ Delete whichever does not apply and type name(s) under signature(s).</p>			

(Form No. 5, second and last page)