

Amended by Order 5/1947

CHAPTER 31. No. 18.

PATENTS, DESIGNS AND TRADE MARKS.

AN ORDINANCE RELATING TO PATENTS FOR INVENTIONS,
DESIGNS, AND TRADE MARKS.

Ordinances
Cap. 189—
1925.
No. 2—1929.
„ 25—1932.
„ 20—1933.
Commencement.

[28th March, 1900.]

1. This Ordinance may be cited as the Patents, Designs, and Trade Marks Ordinance. Short title.

2. In this Ordinance—

Interpreta-
tion.

“certified” means certified in accordance with the provisions of Part V. of the Evidence Ordinance;

“class” means prescribed class;

“copyright” means the exclusive right to apply a design to any article of manufacture or to any such substance as aforesaid in the class or classes in which the design is registered;

“Court” means the Supreme Court;

“design” means any design applicable to any article of manufacture, or to any substance artificial or natural, or partly artificial and partly natural, whether the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined;

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

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“ Judge ” means a Judge of the Court;

“ patent ” means certificate of registration in the Register of Patents, and includes all the rights conferred or evidenced by such registration;

“ patentee ” means the person for the time being registered as the proprietor of a patent;

“ registered ” means registered in the Register of Patents, the Register of Designs, or the Register of Trade Marks, as the case may be; and “ registration ” has a corresponding meaning;

“ Registrar ” means the Registrar General, and includes any Deputy Registrar or person acting under the authority of such Registrar; and “ registry ” means the office of the Registrar General;

“ specification ” includes all tracings, drawings, diagrams, and other exhibits referred to in such specification;

“ United Kingdom patent ” means letters patent for an invention granted in the United Kingdom.

PART I.

PATENTS.

Local patents.

Application
for patent.

3. (1) Any person may make an application for a patent.

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

On delivery
of declaration
and specifica-
tion, Registrar
to issue
patent.

4. (1) The Registrar, on an application by or on behalf of any person claiming to be the inventor or proprietor of any invention, and on the delivery to the Registrar of a declaration in writing according to form A in the First Schedule hereto together with a specification in duplicate signed by the applicant or his agent, particularly describing the nature of the invention and in what manner the same is to be performed, and on payment of the prescribed fee, shall deliver to such person or his agent a certificate according to form B in the said Schedule, hereinafter called a patent, and a copy of such patent shall be inserted by the Registrar in the *Royal Gazette*.

(2) All drawings, tracings, diagrams, plans, and other exhibits referred to in any specification shall be made on tracing linen or some other durable material to the satisfaction of the Registrar, and in no case on tracing paper. Drawings.

(3) Provided that if, in lieu of such specifications as aforesaid, the applicant shall deliver a provisional specification describing the nature of the invention, and, if required by the Registrar, accompanied by plans, and shall, in lieu of the fees otherwise payable on application for a patent, pay a fee of \$4.80 or such other fee as may be prescribed, the Registrar may issue to the applicant a certificate in the form E in the said Schedule, and the invention may thereupon be used for a period of nine months or until within such period a patent shall have been granted for the same without prejudice to such patent, and in such case such patent shall be granted on delivery within such period of nine months of such complete specification as hereinbefore mentioned, and on payment of the balance of the fee payable on application for a patent. Provisional specification.

(4) On an application for a patent, the specification or provisional specification and drawings, if any, accompanying or left in connection with such application shall not at any time be open to public inspection or be published by the Registrar, unless and until such patent has been granted. Specification and drawings not public.

5. (1) The Registrar shall keep a book at the registry called "The Register of Patents," and shall record therein under a distinguishing number and in the order in which application shall have been duly made to him, every such invention, and the christian and surname of the inventor, and the day of the date of the patent, and shall cause every specification to be marked with the distinguishing number of the invention to which the specification refers. Register of Patents.

(2) All assignments, charges, transmissions, amendments, extensions, and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may from time to time be prescribed, shall be notified to the Registrar, who shall, on sufficient evidence thereof, and on payment of the prescribed fee, note the same in the Register of Patents.

6. Every patent shall vest in the patentee, his executors, administrators, or assigns and licensees, the sole right and Patent to vest exclusive right for 14 years.

benefit of using within the Colony the invention mentioned in such patent for and during the space of fourteen years next after the granting of such patent: Provided that, at any time before the expiration of such period, the Governor may, in his discretion, extend the same for any period not exceeding seven years, and may in like manner extend such further period to a like extent as often as he shall deem right.

Disclaimer or alteration.

7. Any patentee may, on payment of the prescribed fee, enter with the Registrar a disclaimer of any part of either the title of the invention or of the specification, stating the reasons for such disclaimer, or may enter a memorandum of any alteration in such title or specification, not being such disclaimer or such alteration as would make the patentee claim an invention substantially larger than, or substantially different from, that claimed by the specification as it stood before such amendment; and such disclaimer or memorandum of alteration being filed by the said Registrar shall be deemed and taken to be part of such title or specification: Provided that the foregoing provisions of this section shall not apply to a patent in respect of which an action for infringement or proceeding for revocation of a patent is pending.

Amendment of specification.

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

Infringement.

9. A patentee may restrain any person from infringing his patent, and may recover damages for such infringement by action in the Court.

Revocation.

10. (1) Revocation of a patent may be obtained on petition to the Court on any of the following grounds, namely:—

(a) that the patent was obtained by fraud;

(b) that the patentee was not the true inventor or proprietor of every invention included in his claim;

(c) that anything claimed by the patentee as his invention was publicly manufactured, used, or sold within the Colony before the date of the patent, or included in some prior patent.

*See Sec.
3(2) of
Order 5/47.*

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

(a) the Attorney General or Solicitor General, or any person authorised by them or either of them;

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

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

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

11. (1) In any action or proceeding for the infringement or revocation of a patent, the plaintiff or petitioner must deliver with his statement of claim or petition particulars of the breaches complained of or the objections on which he means to rely, and a defendant must deliver with his statement of defence particulars of any objections on which he relies, and no evidence, except by leave of the Court or a Judge, shall be admitted in proof of any breach or objection of which particulars are not so delivered. Procedure.

(2) Particulars delivered may be from time to time amended, by leave of the Court or a Judge.

(3) When a patent has been revoked on the ground of fraud, the Registrar may, on the application of the true inventor, made in accordance with the provisions of this Ordinance, grant to him or his agent a patent according to the form in the First Schedule to this Ordinance in lieu of and bearing the same date as the date of revocation of the patent so revoked, and a copy of such patent shall be inserted by the Registrar in the *Royal Gazette*; but the patent so granted shall cease on the expiration of the term for which the revoked patent was granted.

(4) No proceeding shall lie for revocation of a patent vested in His Majesty's Secretary of State for War for the time being, except by consent of the Governor.

Rights of
the Crown.

12. (1) A patent shall have to all intents the like effect against His Majesty as it has against a subject.

(2) But the officers or authorities administering any department of the service of the Crown may, by themselves, their agents, contractors, or others, at any time after the application, use the invention for the services of the Crown on terms to be before or after the use thereof agreed on with the approval of the Governor between those officers or authorities and the patentee, or, in default of such agreement, on such terms as may be settled by the Governor.

Court may
order patentee
to grant
licences.

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

(a) an invention is not being worked in the Colony,

(b) the reasonable requirements of the public with respect to the invention cannot be supplied, or

(c) any person is prevented from working or using to the best advantage an invention of which he is possessed,

the Court may order the patentee to grant licences on such terms, and may enforce such order in such manner, as it shall think fit.

Loss or
destruction
of patent.

14. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the Registrar, the Registrar may at any time cause a duplicate thereof to be issued.

United Kingdom patents.

Application
for registra-
tion.

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

Documents to
accompany
application.

16. (1) Every application under the last preceding section shall be accompanied by two certified copies of the specification or specifications (including drawings, if any) of the United

Kingdom patent and a certificate of the Comptroller General of the United Kingdom Patent Office, giving full particulars of the issue of the patent on such specification or specifications.

(2) Upon such application being received, together with the documents mentioned in subsection (1) of this section the Registrar shall issue a certificate of registration.

Issue of certificate of registration.

(3) Such certificate of registration shall confer on the applicant privileges and rights, subject to all conditions established by the law of the Colony, as though the patent had been issued in the United Kingdom with an extension to the Colony.

Rights conferred by certificate.

(4) Privileges and rights so granted shall date from the date of the patent in the United Kingdom, and shall continue in force only so long as the patent remains in force in the United Kingdom:

Duration of rights conferred by certificate.

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

No action for infringement prior to issue of certificate.

16A. The Court shall have power upon the application of any person who alleges that his interests have been prejudicially affected by the issue of a certificate of registration under subsection (2) of section 16, to declare that the exclusive privileges and rights conferred by such certificate of registration have not been acquired on any of the grounds upon which the United Kingdom patent might be revoked under the law for the time being in force in the United Kingdom.

Power of Court to adjudicate on privileges conferred by a certificate of registration.
Ord. 25-1932, s. 2.

Such grounds shall be deemed to include the manufacture, use or sale of the invention in the Colony prior to the date of the patent in the United Kingdom, but not to include the manufacture, use or sale of the invention in the Colony by some person or persons after the date of the patent in the United Kingdom and prior to the date of the issue of the certificate of registration under subsection (2) of section 16.

17. The Registrar shall record in the Register of Patents, in a special part to be set aside for United Kingdom patents, under a distinguishing number and in the order in which applications shall have been duly made to him, every application

Register of Patents.

for the registration of a United Kingdom patent, and the christian and surname of the applicant, and the day of the date of the certificate of registration issued in respect thereof.

Amendment
of entries in
Register.

18. Whenever the specification or drawings of a United Kingdom patent registered in the Colony have been amended by way of disclaimer, correction, or explanation, according to the law of the United Kingdom, on request, accompanied by a copy of the specification and drawings, if any, as amended, duly certified by the Comptroller General of the United Kingdom Patent Office, the Registrar shall substitute a copy of the specification and drawings as amended, for the specification and drawings originally filed.

Entry of
assignments
in Register.

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

PART II.

DESIGNS.

Register of
Designs.

20. There shall be kept at the registry a book called "The Register of Designs," wherein shall be entered the names and addresses of proprietors of registered designs, and such other matters as may from time to time be prescribed.

Author of
new design
to be deemed
proprietor
thereof.

21. The author of any new and original design shall be deemed to be the proprietor thereof, unless he executed the work on behalf of another person for a good or valuable consideration, in which case such person shall be considered the proprietor; and every person acquiring for a good or valuable consideration a new and original design, or the right to apply the same to any article or substance, either exclusively of any other person or otherwise, and also every person on whom the property in such design or such right to the application thereof shall devolve shall be considered the proprietor of the design in

the respect in which the same may have been so acquired, and to that extent, but not otherwise.

22. (1) The Registrar may, on application by or on behalf of any person claiming to be the proprietor of any new or original design not previously published in the Colony, and on payment of the prescribed fee, register the design under this Part of this Ordinance. Application for registration of designs.

(2) The application must be made in form C in the First Schedule hereto, or in such other form as may be from time to time prescribed, and must be left at the registry in the prescribed manner.

(3) The application must contain a statement of the nature of the design, and the prescribed class or classes of goods in which the applicant desires that the design be registered.

(4) The same design may be registered in more than one class.

(5) In case of doubt as to the class in which a design ought to be registered, the Registrar may decide the question.

(6) The Registrar may, if he thinks fit, refuse to register any design presented to him for registration, but any person aggrieved by any such refusal may appeal therefrom to a Judge in Chambers.

23. On application for registration of a design, the applicant shall furnish to the Registrar the prescribed number of drawings, photographs, or tracings of the design sufficient to enable him to identify the design, and suitable for the official records; or the applicant may, instead of such copies, furnish exact representations or specimens of the design. Drawings, etc., to be furnished on application.

24. (1) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Ordinance, have copyright in the design during five years from the registration of the design. Copyright on registration.

(2) Before delivery on sale of any articles to which a registered design has been applied, the proprietor must (if exact representations or specimens were not furnished on the

application for registration) furnish to the Registrar the prescribed number of exact representations or specimens of the design; and if he fails to do so, the Registrar may erase his name from the register, and thereupon his copyright in the design shall cease.

Marking
registered
designs.

25. Before delivery on sale of any articles to which a registered design has been applied, the proprietor of the design shall cause each such article to be marked with the prescribed mark, or with the prescribed word or words or figures, denoting that the design is registered; and if he fails to do so the copyright in the design shall cease, unless the proprietor shows that he took all proper steps to ensure the marking of the article.

Inspection of
registered
designs.

26. (1) During the existence of copyright in a design, the design shall not be open to inspection except by the proprietor or a person authorised by the Registrar or by the Court, and furnishing such information as may enable the Registrar to identify the design, nor except in the presence of the Registrar, nor except on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design or of any part thereof.

(2) When the copyright in a design has ceased, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

Information
as to existence
of copyright.

27. On the request of any person producing a particular design, together with its mark of registration, or producing only its mark of registration, or furnishing such information as may enable the Registrar to identify the design, and on payment of the prescribed fee, it shall be the duty of the Registrar to inform such person whether the registration still exists in respect of such design, and if so, in respect of what class or classes of goods, and stating also the date of registration, and the name and address of the registered proprietor.

Ceasing of
copyright.

28. If a registered design is used in manufacture in any foreign country and is not used in the Colony within six months of its registration in the Colony, the copyright in the design shall cease.

29. (1) During the existence of copyright in any design no person—

Penalty on piracy of registered design.

(a) shall, without the licence or written consent of the registered proprietor, apply or cause to be applied such design or any fraudulent or obvious imitation thereof, in the class or classes of goods in which such design is registered, for purposes of sale, to any article of manufacture or to any substance, artificial or natural, or partly artificial and partly natural;

(b) shall publish or expose for sale any article of manufacture or any substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, knowing that the same has been so applied without the consent of the registered proprietor.

(2) Any person who acts in contravention of this section shall be liable for every offence to forfeit a sum not exceeding two hundred and forty dollars to the registered proprietor of the design, and such registered proprietor may, by action brought in the Court, recover either such sum as a simple contract debt, or damages arising from any breach of the said section:

Provided that the total sum forfeited in respect of any one design shall not exceed four hundred and eighty dollars.

PART IIA.

[8th March, 1929.]

UNITED KINGDOM DESIGNS.

29A. Any person being the registered proprietor of a design registered in the United Kingdom under the Patents and Designs Acts, 1907 and 1919, or any Act amending or substituted for those Acts, or any person deriving his right from such registered proprietor by assignment, transmission, or other operation of law, may apply within three years from the date of registration of the design to have such design registered in the Colony. Where any partial assignment or transmission has been made all proper parties shall be joined in the application for registration.

T.—IV.

Ordinances
No. 2—1929.
„ 25—1932,
s. 3.
„ 20—1933.

29B. An application for registration of a design under the last preceding section shall be made to the Registrar and accompanied by two representations of the design and a certificate of the Comptroller General of the United Kingdom Patent Office giving full particulars of the registration of the design in the United Kingdom and stating the date at which such design became or will normally become open to public inspection.

29C. Upon such application being lodged, together with the documents mentioned in section 29B, the Registrar shall issue a certificate of registration.

29D. Such certificate of registration shall confer on the applicant privileges and rights subject to all conditions established by the law of this Colony as though the certificate of registration in the United Kingdom had been issued with an extension to the Colony.

29E. Privileges and rights so granted shall date from the date of registration in the United Kingdom and shall continue in force only so long as the registration in the United Kingdom remains in force:

Provided that no action for infringement of copyright in the design shall be entertained in respect of any use of the design prior to the date of issue of the certificate of registration in the Colony.

29F. The Court shall have power upon the application of any person who alleges that his interests have been prejudicially affected by the issue of a certificate of registration under section 29C to declare that the exclusive privileges and rights conferred by such certificate have not been acquired on any of the grounds upon which the United Kingdom registration might be cancelled under the law for the time being in force in the United Kingdom.

Ord. 25-1932,
s. 3.

Such grounds shall be deemed to include the publication of the design in the Colony prior to the date of registration of the design in the United Kingdom, but not to include the publication of the design in the Colony by some person or persons after the date of the registration of the design in the United

Kingdom and prior to the date of the issue of the certificate of registration under the said section 29c.

29G. Where a person becomes entitled by assignment, transmission, or other operation of law to the privileges and rights conferred by a certificate of registration under section 29c, or to any interests therein, he may make application in the prescribed manner to the Registrar for the entry on the register of such assignment, transmission, or other instrument affecting the title, or giving an interest therein.

29H. The Registrar may make such general rules and do such things as he may think expedient, subject to the provisions of this Ordinance, for regulating procedure under this Part of this Ordinance, and prescribing the fees to be paid in respect of proceedings thereunder.

29I. Notwithstanding the provisions of sections 26 and 55, a design registered under this Part of this Ordinance shall not be open to inspection (except by the proprietor or a person authorised in writing by him, or a person authorised by the Registrar or by the Court) before the date when such design became open to public inspection in the United Kingdom.

29J. All extensions of the period of copyright in the United Kingdom in a design registered under this Part of this Ordinance shall be notified to the Registrar, who shall on sufficient evidence thereof and on payment of the prescribed fee enter the same in the register in the prescribed manner.

29K. With regard to designs registered under this Part of this Ordinance, the Registrar may, on request in writing made by the registered proprietor, and on payment of the prescribed fee,

(a) cancel the registration of a design either wholly or in respect of any particular goods in connection with which the design is registered;

(b) correct any clerical error in or in connection with any application under this Ordinance or in any matter which is entered upon the register;

(c) enter in the register any change in the name or address of the person who is registered as proprietor of a design.

PART III.

TRADE MARKS.

Register of
trade marks.

30. There shall be kept at the registry a book called the Register of Trade Marks, wherein shall be entered the names and addresses of proprietors of registered trade marks, notifications of assignments, charges, and transmissions of trade marks, and such other matters as may be from time to time prescribed.

Application
for registra-
tion.

31. (1) The Registrar may, on application by or on behalf of any person claiming to be the proprietor of a trade mark, and on payment of the prescribed fee, register the trade mark.

(2) The application must be made in form D in the First Schedule hereto, or in such other form as may be from time to time prescribed, and must be left at the registry in the prescribed manner.

(3) The application must be accompanied by the prescribed number of representations of the trade mark, and must state the particular class of goods or classes of goods in connection with which the applicant desires the trade mark to be registered.

(4) The Registrar may, if he thinks fit, refuse to register a trade mark, subject to appeal to a Judge in Chambers.

Limit of time
for completing
registration.

32. Where the registration of a trade mark shall not be completed within twelve months from the date of the application, by reasons of default on the part of the applicant, the application shall be deemed to be abandoned.

Conditions of
registration of
trade mark.

33. (1) For the purposes of this Ordinance, a trade mark must consist of or contain at least one of the following essential particulars,—

(a) a name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or

(b) a written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

(c) a distinctive device, mark, brand, heading, label, or ticket; or

- (d) an invented word or invented words; or
- (e) a word or words having no reference to the character or quality of the goods, and not being a geographical name.

(2) There may be added to any one or more of the essential particulars mentioned in this section any letters, words, or figures, or combination of letters, words, or figures or of any of them, but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

(3) Provided that—

(a) a person need not, under this section, disclaim his own name, or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof;

(b) any special and distinctive word or words, letter, figure, or combination of letters or figures, or of letters and figures, used as a trade mark, either in the Colony or elsewhere, before the 13th of August, 1875, may be registered as a trade mark.

34. A trade mark must be registered for particular goods or classes of goods.

Connection of trade mark with goods.

35. When a person claiming to be the proprietor of several trade marks which, while resembling each other in the material particulars thereof, yet differ in respect of (a) the statement of the goods for which they are respectively used or proposed to be used, or (b) statements of numbers, or (c) statements of price, or (d) statements of quality, or (e) statements of names of places, seeks to register such trade marks, they may be registered as a series in one registration. A series of trade marks shall be assignable and transmissible only as a whole, but for all other purposes each of the trade marks composing a series shall be deemed and treated as registered separately.

Registration of a series of marks.

36. A trade mark may be registered in any colour, and such registration shall, subject to the provisions of this Ordinance,

Colour.

confer on the registered owner the exclusive right to use the same in that or any other colour.

Advertise-
ment of
application.

37. Every application for registration of a trade mark under this Ordinance shall, as soon as may be after its receipt, be advertised by the Registrar in the *Royal Gazette*, unless he shall refuse to entertain the application.

Opposition to
registration.

38. (1) Any person may, within three months of the first advertisement of the application, give notice in duplicate to the Registrar of opposition to registration of the trade mark, and the Registrar shall send one copy of such notice to the applicant.

(2) Within one month after receipt of such notice or such further time as the Registrar may allow, the applicant may send to the Registrar a counter statement in duplicate of the grounds on which he relies for his application, and if he does not do so shall be deemed to have abandoned his application.

Conflicting
claims to
registration.

39. On the receipt of such counter statement, or where each of several persons claims to be registered as proprietor of the same trade mark, the Registrar may refuse to register any of them until their rights have been determined by the Court.

Restrictions
on registra-
tion.

40. (1) Except where the Court has decided that two or more persons are entitled to be registered as proprietors of the same trade mark, the Registrar shall not register in respect of the same goods or description of goods a trade mark identical with one already on the register with respect to such goods or description of goods.

Resemblance
likely to
deceive.

(2) Except as aforesaid the Registrar shall not register with respect to the same goods or description of goods a trade mark having such resemblance to a trade mark already on the register with respect to such goods or description of goods as to be calculated to deceive.

Works likely
to deceive.

41. It shall not be lawful to register as part of or in combination with a trade mark any words the use of which would by reason of their being calculated to deceive or otherwise, be

deemed disentitled to protection in any court of justice in England.

42. (1) Nothing in this Ordinance shall be construed to prevent the Registrar entering on the register, in the prescribed manner, and subject to the prescribed conditions, as an addition to any trade mark, any distinctive word or combination of words, or, in the case of a trade mark used before the 13th of August, 1875, in the Colony or elsewhere, any distinctive device, mark, brand, heading, label, ticket, letter or figure, or combination of letters, words, or figures, though the same is common to the trade in the goods with respect to which the application is made.

Entry of common marks as additions to trade marks.

(2) The applicant for registration of any such addition must, however, state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register: Provided that a person need not under this section disclaim his own name or the foreign equivalent thereof or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.

(3) Any device, mark, brand, heading, label, ticket, letter, word, figure, or combination of letters, words, or figures, which was or were, before the 13th of August, 1875, publicly used by more than three persons in the Colony or elsewhere, on the same or a similar description of goods, shall, for the purposes of this section, be deemed common to the trade in such goods.

43. Where any association or person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by mark used upon or in connection with such goods, the Governor may, if he shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such examination and certifying. When so

Standardization, etc., of trade marks.

registered such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Governor.

Registration to be equal to public use.

44. Application for registration of a trade mark shall be deemed to be equivalent to public use of the trade mark, and the date of the application shall for the purposes of this Ordinance be deemed to be the date of the registration.

Right of first proprietor to exclusive use of trade mark.

45. The registration of a person as proprietor of a trade mark shall be *primâ facie* evidence of his right to the exclusive use of the trade mark, and shall, after the expiration of five years from the date of the registration, be conclusive evidence of his right to the exclusive use of the trade mark, subject to the provisions of this Ordinance.

Infringement of a trade mark.

46. The infringement of a trade mark may be restrained, and damages for such infringement recovered in an action in the Court, if such trade mark has been registered, or if registration thereof in the Register of Trade Marks has been refused, but in no other case. The Registrar may on request, and on payment of the prescribed fee, grant a certificate that such registration has been refused.

Plaintiff to have full costs in subsequent action.

47. In an action for infringement of a registered trade mark, the Court or a Judge may certify that the right to the exclusive use of the trade mark came in question, and if the Court or a Judge so certifies, then, in any subsequent action for infringement, the plaintiff in that action, on obtaining a final order or judgment in his favour, shall have his full costs, charges, and expenses as between solicitor and client, unless the Court or Judge trying the subsequent action certifies that he ought not to have the same.

Assignment and transmission.

48. A trade mark, when registered, shall be assigned and transmitted only in connection with the goodwill of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that goodwill.

49. (1) The registered proprietor of any trade mark may apply to the Court for leave to add to or alter such mark in any particular, not being an essential particular within the meaning of this Ordinance, and the Court may refuse or grant leave on such terms as it may think fit.

Alteration
of registered
mark.

(2) Notice of any intended application to the Court under this section shall be given to the Registrar by the applicant, and the Registrar shall be entitled to be heard on the application.

(3) If the Court grants leave, the Registrar shall, on proof thereof, and on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave.

50. (1) At the expiration of fourteen years from the date of the registration, the trade mark shall be removed from the register, unless the proprietor pays to the Registrar, before the expiration of such fourteen years, the prescribed fee, and so from time to time at the expiration of every period of fourteen years:

Removal
from register
after 14 years.

Provided that, three months at least before the expiration of such period, the Registrar shall give due notice of such approaching expiration to the proprietor of such trade mark.

(2) Where, after the said three months, a trade mark has been removed from the register for non-payment of the prescribed fee, the Registrar may if satisfied that it is just so to do, restore such trade mark to the register on payment of the prescribed additional fee.

(3) Where a trade mark has been removed from the register for non-payment of the fee or otherwise, such trade mark shall, nevertheless, for the purpose of any application for registration during the one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that the non-payment of the fee arises from the death or bankruptcy of the registered proprietor, or from his having ceased to carry on business, and that no person claiming under that proprietor or under his bankruptcy is using the trade mark.

PART IV.

GENERAL.

- Trusts. 51. There shall not be entered in any register kept under this Ordinance, or be receivable by the Registrar, any notice of any trust expressed, implied, or constructive.
- Scandalous patent, design, or mark. 52. The Registrar may refuse to grant a patent for an invention, or to register a design or trade mark which is, or of which the use would be, scandalous or contrary to law or morality.
- When patent, etc., deemed to be registered. 53. Any patent, design, or trade mark shall be deemed to be registered when the name of any person is entered, as the proprietor thereof, in the Register of Patents, the Register of Designs, or the Register of Trade Marks, as the case may be.
- Entry of assignments and transmissions. 54. Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, or to the copyright in a registered design, or to a registered trade mark, the Registrar shall, on request, and on proof of title, cause the name of such person to be entered as proprietor of the patent, copyright in the design, or trade mark, in the Register of Patents, Designs, or Trade Marks, as the case may be. The person for the time being entered in the Register of Patents, Designs, or Trade Marks, as proprietor for a patent, copyright in a design, or trade mark, as the case may be, shall, subject to the provisions of this Ordinance, and to any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise deal with the same, and to give effectual receipts for any consideration for such assignment, licence, or dealing: Provided that any equities in respect of such patent, design, or trade mark may be enforced in like manner as in respect of any other personal property: Provided also, that the priority of all assignments and charges shall, as regards purchasers for value without notice, be determined by priority of registration.
- Power of proprietor to assign.
- Priority.
- Inspection of and extracts from register. 55. Every register kept under this Ordinance shall be *prima facie* evidence of all matters duly entered therein; and every such register and the specification of every registered patent

shall be open to the inspection of the public on payment of the prescribed fee, subject to the provisions of this Ordinance and to such regulations as may be prescribed; and certified copies, sealed with the seal of the Registrar, of any entry in such register or of any such specification, shall be given to any person requiring the same on payment of the prescribed fee: Provided that whenever any specification or extract includes any tracing, drawing, or diagram, an additional fee for any copy thereof shall be paid equal to the cost of preparing such tracing, drawing, or diagram.

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

Correction of errors, cancellation, and amendment.

(a) correct any clerical error in or in connection with an application for a patent, or for registration of a design or trade mark; or

(b) correct any clerical error in the name, style, or address of the registered proprietor of a patent, design, or trade mark; or

(c) cancel the entry or part of the entry of a trade mark on the register: Provided that the applicant accompanies his request by a statutory declaration made by himself stating his name, address, and calling, and that he is the person whose name appears on the register as the proprietor of the said trade mark; or

(d) permit an applicant for registration of a design or trade mark to amend his application by omitting any particular goods or classes of goods in connection with which he has desired the design or trade mark to be registered.

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

Certificate of Registrar to be evidence.

58. An order requiring the Registrar to do or abstain from doing anything under this Ordinance, may be made by a Judge on a summons in Chambers.

Orders by a Judge.

Powers of
Court or
Judge.

59. In any proceedings under this Ordinance, the Court or a Judge, as the case may be, may at any time make such orders for an injunction, inspection, or account, impose such terms, and give such directions as to the order in which the parties shall be heard, and the procedure under this Ordinance generally, as the Court or Judge shall see fit.

Persons under
disability.

60. If any person is, by reason of infancy, unsoundness of mind, or other disability, incapable of making any declaration or doing anything required or permitted by this Ordinance, or by any rules made under the authority of this Ordinance, then the guardian or committee, if any, of such incapable person, or if there be none, any person appointed by any Court or Judge possessing jurisdiction in respect of the property of persons under disability, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration, or a declaration as nearly as possible corresponding thereto, as circumstances permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall for the purposes of this Ordinance be as effectual as if done by the person for whom he is substituted.

Publication of
quarterly lists.

61. The Registrar shall cause to be published, during each quarter, in the *Royal Gazette*, a list of all patents granted, and designs and trade marks registered, during the preceding quarter, and any further information that he may deem generally useful or important.

Transmission
of copies, etc.,
to England.

62. Copies of the specifications of all registered patents, and all registered amendments thereof, and of all published lists of registered designs and trade marks, shall be transmitted to the Comptroller of Patents, Designs, and Trade Marks in England.

Declarations.

63. Any declaration required to be made under this Ordinance may be taken by the Registrar.

International and Colonial arrangements.

64. (1) Any person who has applied for protection for any invention, design, or trade mark in the United Kingdom, or in any foreign State with the Government of which His Majesty has made arrangements under the provisions of section 103 of the Patents, Designs, and Trade Marks Act, 1883, as amended by the Patents Act, 1901, or any subsequent enactment, for mutual protection of inventions, designs, and trade marks, shall be entitled to a patent for his invention, or to registration of his design, or trade mark, as the case may be, under this Ordinance, in priority to other applicants; and such patent or registration shall take effect from the same date as the date of the application in the United Kingdom or such foreign State, as the case may be.

International and colonial arrangements.

46 & 47 Vict. c. 57.

1 Edw. VII. c. 18.

(2) Such application shall be made, in the case of a patent, within twelve months, and in the case of a design or trade mark, within four months, from such person applying for protection in the United Kingdom or the foreign State with which the arrangement is in force.

(3) Nothing in this section contained shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification, or the actual registration of his design or trade mark, as the case may be, in the Colony.

(4) The publication in the Colony during the respective periods aforesaid of any description of the invention, or the use therein during such periods of the invention, or the exhibition or use therein during such periods of the design, or the publication therein during such periods of a description or representation of the design, or the use therein during such periods of the trade mark, shall not invalidate the patent granted for the invention, or the registration of the design or trade mark.

(5) The application for the grant of a patent, or the registration of a design or a trade mark, under this section shall be made in the same manner, and subject to the payment of the same fees, as an ordinary application under Parts I., II., II.A. and III. respectively of this Ordinance.

(6) In the case of a patent, an application under this section shall be accompanied by a complete specification which,

if it be not accepted within the period of twelve months, shall with drawings, if any, be open to public inspection at the expiration of that period.

(7) The provisions of this section shall, in the case of foreign States, apply only in the case of those foreign States with respect to which His Majesty, from time to time, by order in council, declares the provisions of the aforesaid section 103 of the said first recited Imperial Act, or any subsequent enactment, to be applicable, and so long only in the case of each State as such order continues in force with respect to that State.

64A; 64B + 64C added by sec. 4(3) of 5/47

Inter-colonial
arrangements.

65. (1) Whenever it appears to the Governor in Council that the legislature of any British Possession has made satisfactory provision for the protection in such Possession of inventions, designs, and trade marks, patented or registered in the Colony, the Governor in Council may, by order, apply all or any of the provisions of the last preceding section relating to the protection of inventions, designs, and trade marks, patented or registered in the United Kingdom, with such variations or additions, if any, as to the Governor in Council seem fit, to inventions patented, and designs and trade marks registered, in such British Possession.

(2) An order under this section shall, from a date to be mentioned for the purpose in the order, take effect as if its provisions had been contained in this Ordinance.

Rules and fees.

Rules and
fees.

*See Sec. 3
(5) of
5/47*

66. (1) The Registrar, with the sanction of the Governor, may from time to time make such general rules and do such things as he may think expedient, for regulating the practice of registration under this Ordinance, for classifying goods for the purposes of designs and trade marks, for prescribing the fees to be paid under this Ordinance, or for any other purpose which may be or be deemed necessary for the carrying out of the provisions of this Ordinance.

(2) Subject to the provisions hereinbefore contained, the fees mentioned in the Second Schedule hereto shall be paid to the Registrar, save and except the fee of \$2.40 for publication

in the *Royal Gazette*, which shall be paid to the Government Printer.

(3) Any rules made in pursuance of this section shall be laid before the Legislative Council.

SCHEDULES.

FIRST SCHEDULE.

FORM A.

(Section 4.)

Application for Patent.

I, _____ of _____, do solemnly and sincerely declare that I am in possession of an invention for _____ [state the title of the invention], which invention I believe will be of great public utility, and that the same is not in use by any person or persons in the Colony of Trinidad and Tobago to the best of my knowledge and belief, and that the instrument in writing under my hand herewith delivered particularly describes and ascertains the nature of the said invention, and the manner in which the same is to be performed; and I humbly pray that a patent may be granted to me for the said invention.

I make this declaration conscientiously believing the same to be true and according to the Statutory Declarations Ordinance, and I am aware that if there is any statement in this declaration which is false in fact which I know or believe to be false or do not believe to be true, I am liable to fine and imprisonment.

Declared at _____ on the _____ day of _____, 19 ____ .
Before me, _____

FORM B.

(Section 4.)

Patent.

I, A. B., Registrar of Patents, Designs, and Trade Marks for the Colony of Trinidad and Tobago, do hereby certify that on the _____ day of _____, 19 ____, has been delivered to me by [or, on behalf of] _____ of _____, a declaration in writing signed by the said _____ of a certain invention, whereof the said _____ claims to be the inventor or proprietor, being an invention [state the name of the invention] together with a specification describing the nature of the said invention and the manner in which the same is to be performed, and that the name of the said _____ has been entered in the Register of Patents as the proprietor of this patent.

In witness whereof I have hereunto put my hand at Port-of-Spain this _____ day of _____, 19 ____ .

FORM C.

(Section 22.)

Application for Registration of Design.

You are hereby requested to register the accompanying _____ day of _____, 19 ____ .
in the name of _____ of _____ Design in Class _____
the same to _____ who claims to be the proprietor thereof and to return
Statement of nature of Design _____

To the Registrar of Patents, Designs, and Trade Marks for the Colony of Trinidad and Tobago.

(Signed) _____

(Section 31.)

FORM D.

Application for Registration of Trade Mark.

(One representation to be fixed within this space and two others on separate sheets of foolscap of same size.)

(Representations of a larger size may be folded, but must be mounted upon linen and affixed hereto.)

You are hereby requested to register the accompanying trade mark in Class in the name of _____ who claims to be the proprietor thereof.
To the Registrar of Patents, Designs, and Trade Marks for the Colony of Trinidad and Tobago.

(Signed)

(Section 4.)

FORM E.

Certificate of Provisional Protection.

I, A. B., Registrar of Patents, Designs, and Trade Marks for the Colony of Trinidad and Tobago hereby certify that on _____ the _____ day of _____, 19____, has been delivered to me by [or, on behalf of] _____ of _____ a declaration in writing signed by the said _____ of a certain invention whereof the said _____ claims to be the inventor or proprietor, being an invention [state the name of the invention] together with a provisional specification describing the nature of the invention, and that the said _____ is entitled to provisional protection from the consequences of the use and publication of such invention for the period of nine months from this date or until within that period a patent for the same shall have been granted.

A. B.,
Registrar General.

(Section 66.)

SECOND SCHEDULE (a).

	\$	c.
On application for a patent or extension thereof	48	00
On registration of every disclaimer or amendment	9	60
On registration of every assignment, charge or transmission of a patent	4	80
On application for registration of every design	14	40
On application for registration, or renewal of registration, of every trade mark	14	40
On restoration to register (in addition)	4	80
On registration of every assignment charge, or transmission of copyright in a design or property in a trade mark	2	40
On publication in <i>Royal Gazette</i> of any application, declaration, disclaimer or other matter required to be published	2	40
On every search or inspection of any of the registers	0	48
On inspection of any specification	0	72
On every certificate (other than of the correctness of a copy) ...	4	80

(a) See *Royal Gazette*, 1930, p. 732.