

---

# NATIONAL SECURITY (INDUSTRIAL PROPERTY) REGULATIONS.\*

## Citation.

1. These Regulations may be cited as the National Security (Industrial Property) Regulations.\*

## Administration.

2. These Regulations shall be administered by the Attorney-General.

## Reg. 3 repealed by Act No. 77, 1946.

## References to Commissioner, &c., to include references to Deputy.

4. Any reference in these Regulations to the Commissioner of Patents, the Registrar of Trade Marks or the Registrar of Designs shall include a reference to a Deputy Commissioner of Patents, the Deputy Registrar of Trade Marks or a Deputy Registrar of Designs, respectively.

## Prohibition of publication of information with respect to inventions and designs, &c.

5.—(1.) Subject to any directions of the Attorney-General, the Commissioner of Patents or the Registrar of Designs may, notwithstanding anything contained in any Act, if it appears to him to be necessary or expedient so to do in the interests of the public safety or the defence of the Commonwealth, by order, prohibit or restrict the publication of information with respect to the subject matter of any application made (whether before or after the commencement of this

---

\* The National Security (Industrial Property) Regulations in force under the *Defence Transition (Residual Provisions) Act 1952* comprise the following Statutory Rules:—

Year and Number.	Date of Notification in <i>Gazette</i> and of Commencement.
1943, No. 7 .....	13th January, 1943
1944, No. 93 .....	23rd June, 1944
113 .....	28th July, 1944
1945, No. 146 .....	13th September, 1945
1956, No. 29 .....	12th April, 1956

These Regulations were also amended by the *Defence (Transitional Provisions) Act 1946* (No. 77, 1946).

---

---

regulation) for the grant of a patent or the registration of a design and prohibit or restrict the communication of such information to any person or to particular persons or classes of persons.

(2.) A person shall not publish or communicate any information in contravention of any order continued in force under **regulation 3** of these Regulations or made under the last preceding sub-regulation.

### **Sub-reg. (3.) omitted by 1945, No. 146.**

## **Commissioner may refrain from or delay certain actions**

6. Subject to any direction of the Attorney-General, the Commissioner of Patents, the Registrar of Trade Marks or the Registrar of Designs may, notwithstanding anything contained in any Act, if it appears to him to be necessary or expedient so to do in the interests of the public safety or the defence of the Commonwealth, or by reason of circumstances attributable to the war, refrain from doing, or delay the doing of, anything which he would otherwise be required to do in connexion with any application made (whether before or after the commencement of this regulation) for the grant of a patent or the registration of a trade mark or design.

## **Use of inventions and designs for services of the Commonwealth.**

7.—(1.) At any time after a patent has been granted or an application for a patent has been received in the Patent Office, or at any time after a design has been registered or an application for the registration of a design has been received in the Designs Office, the Commonwealth may make, use, exercise and vend the invention, or may apply the design, in connexion with the public safety or defence of the Commonwealth, and any contractor with the Commonwealth, and any person performing any work or service, or supplying any goods, necessary for the execution of any contract with the Commonwealth, may make, use, exercise and vend any such invention or may apply any such design, for the services of the Commonwealth in connexion with the public safety or defence of the Commonwealth.

(2.) Where any patented invention is so made, used, exercised or vended, or any registered design is so applied, the terms for the making, use, exercise or vending of the invention, or for the application of the design, shall be such terms as are, either before or after the making, use, exercise or vending of the invention or the application of the design, agreed upon with the approval of the Attorney-General between the Commonwealth, or the contractor or person performing the work or service or supplying the goods, as the case may be, and the patentee or the registered proprietor of the design, or, in default of agreement, as are fixed—

- (a) by the Attorney-General; or
- (b) on reference by the Attorney-General of the matter to the High Court or the Supreme Court of a State—by the Court to which the matter is referred.

(3.) The High Court or the Supreme Court shall, upon a reference being made thereto under the last preceding sub-regulation, have jurisdiction to fix the terms for the making, use, exercise or vending of the invention or the application of the design, as the case may be.

(4.) Any agreement or licence (whether entered into before or after the commencement of this regulation) fixing the terms on which any person (other than the Commonwealth) may make, use, exercise or vend an invention, or apply a design, shall be inoperative with respect to the making, using, exercising or vending of the invention after the commencement of this regulation, or the

---

---

application of the design after the commencement of this regulation, whether in pursuance of the authority conferred by [sub-regulation \(1.\)](#) of this regulation or otherwise, for the services of the Commonwealth in connexion with the public safety or defence of the Commonwealth, unless the agreement has been approved by the Attorney-General.

(5.) An agreement entered into in pursuance of [sub-regulation \(2.\)](#) of this regulation shall not make provision for any payment in respect of matters not arising directly from the right to make, use, exercise or vend the invention, or to apply the design. to which the agreement relates.

(6.) The High Court or the Supreme Court may in fixing, and the Attorney-General may in fixing or approving, the terms for the making, use, exercise or vending of an invention, or for the application of a design, take into consideration any compensation which the inventor, applicant, patentee, licensee. or any person interested in the invention, or the applicant, registered proprietor or any person interested in the design. has received directly or indirectly from the Commonwealth in respect of the invention or design.

(7.) A contractor with the Commonwealth, and a person performing any work or service, or supplying any goods, necessary for the execution of any contract with the Commonwealth, in connexion with the public safety or the defence of the Commonwealth, shall not make any charge against the Commonwealth, or include in the cost of any such work, service or goods, any amount, either as a separate item or otherwise, in respect of the right to make, use, exercise or vend any invention, or the right to apply any design, unless the amount is payable under an agreement or licence which is not inoperative by virtue of these Regulations.

(8.) No action for infringement shall lie against the Commonwealth or any person in respect of the making, use, exercise or vending of an invention, or the application of a design, whether under [sub-regulation \(1.\)](#) of this regulation or otherwise, in connexion with the public safety or defence of the Commonwealth or for the services of the Commonwealth in connexion with the public safety or defence of the Commonwealth.

(9.) The right to make, use, exercise and vend an invention, or to apply a design, under [sub-regulation \(1.\)](#) of this regulation shall include power to sell any goods made in pursuance of that right which are no longer required by the Commonwealth in connexion with the public safety or the defence of the Commonwealth, and a purchaser of any goods so sold, and any person claiming through him, shall be entitled to deal with the goods as if the Commonwealth were the patentee of the invention or the registered proprietor of the design.

## **Declaration may be sought as to use of invention or design**

### **Inserted by 1944, No. 93**

7A.—(1.) A patentee who considers that a patented invention has been made, used, exercised or vended, or the registered proprietor of a design who considers that a design has been applied, in pursuance of the authority conferred by [sub-regulation \(1.\)](#) of the last preceding regulation, may apply to the High Court for a declaration accordingly and the High Court shall have jurisdiction to hear and determine the matter.

(2.) In any proceeding under the last preceding sub-regulation—

- (a) the Commonwealth shall be the defendant; and
  - (b) the Commonwealth may, by way of counterclaim in the proceeding, apply for the revocation of the patent, or the rectification of the Register of Designs, as the case may
-

---

be, and the provisions of the *Patents Act* 1903-1935 with respect to the revocation of patents, or of the *Designs Act* 1906-1934 with respect to the rectification of the Register of Designs, as the case may be, shall, *mutatis mutandis*, apply in relation to the counterclaim.

## **Reg. 8 repealed by Act No. 77, 1946.**

### **Protection of persons disclosing Inventions, &c., to Commonwealth for investigation.**

9. The publication, whether before or after the commencement of this regulation, in the interests of the public safety or the defence of the Commonwealth, of any invention or design—

- (a) to the Commonwealth or to any authority of the Commonwealth; or
- (b) to any person authorized by a Minister or by any authority of the Commonwealth to investigate the invention or design,

shall not, nor shall anything done for the purpose of the investigation, be deemed publication or use of the invention or design so as to prevent the grant of a patent for the invention or the registration of the design or so as to invalidate any patent for the invention or the copyright in the design.

## **Regs. 10 and 11 repealed by 1956, No. 29.**

### **High Court may order granting of compulsory licences in certain circumstances.**

12.—(1.) Where—

- (a) the time within which an application for a patent may be made under [section 121](#) of the *Patents Act* 1903-1935 has, in pursuance of [section 9](#) of the *Patents, Trade Marks, Designs and Copyright (War Powers) Act* 1939-1940, been extended;
- (b) a patent has been granted on the application; and
- (c) prior to the date on which the specification became open to public inspection, a person made, used, exercised or vended the invention or took steps to do so,

the High Court may, on the application of that person, order the patentee to grant a licence under the patent to that person for such period and on such terms (if any) as the Court thinks fit.

(2.) Where—

- (a) the Commissioner of Patents has delayed the advertisement of the acceptance of an application and complete specification, whether under [regulation 21](#) of the National Security (General) Regulations or under [regulation 6](#) of these Regulations;
- (b) a patent has been granted on the application; and
- (c) during the period during which the advertisement of the acceptance was delayed, a person made, used, exercised or vended the invention or took steps to do so,

the High Court may, on the application of that person, order the patentee to grant a licence under the patent to that person for such period and on such terms (if any) as the Court thinks fit.

---

---

(3.) The patentee and any person claiming an interest in the patent as exclusive licensee shall be made a party to any proceedings under this regulation and the Commissioner of Patents shall be entitled to appear and be heard on the hearing of the application.

(4.) In considering any application under this regulation, the Court shall have regard (amongst other things) to the circumstances under which the applicant commenced to make, use, exercise or vend the invention, or to take steps to do so, and shall not grant the application unless the Court is satisfied that the applicant has acted in good faith.

(5.) An order under this regulation directing the grant of a licence shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed executed by the patentee and all necessary parties.

## **Protection of trade marks under war circumstances.**

13.—(1.) The Registrar of Trade Marks may renew the registration of a trade mark, notwithstanding that there has not been substantial user thereof since the date of the last registration, if the Registrar is satisfied that the want of substantial user thereof is due to circumstances attributable to the war.

(2.) An order shall not be made under [section 72](#) of the *Trade Marks Act 1905-1936* for the removal of a trade mark from the Register of Trade Marks if the Court is satisfied that the want of *bona fide* user of the trade mark is due to circumstances attributable to the war.

(3.) The reputation which a trade mark possesses shall not be affected by any non-user or reduced user thereof which is due to circumstances attributable to the war.

## **Modification of law as to trade marks in relation to essential imports.**

14.—(1.) No action shall lie for the infringement of a registered trade mark or for passing off against any person in relation to the use of a mark upon or in connexion with goods which are essential imports if the mark or get-up of the goods is identical or nearly identical with a mark or get-up applied to the goods outside Australia by the overseas supplier thereof.

(2.) The use in Australia, upon or in connexion with goods which are essential imports, of a mark which was applied to the goods outside Australia by the overseas supplier thereof shall not be deemed user of a trade mark for the purpose of establishing rights under the *Trade Marks Act 1905-1936* or at common law.

(3.) In any proceedings for any offence under [Part IX.](#) of the *Trade Marks Act 1905-1936* it shall be a defence if the person charged proves that the goods were essential imports and that the mark applied to the goods or the get-up thereof was identical or nearly identical with a mark or get-up applied to the goods outside Australia by the overseas supplier thereof.

(4.) In this regulation—

“essential imports” means goods imported by or on behalf of the Commonwealth or an authority of the Commonwealth for use in connexion with the public safety or the defence of the Commonwealth;

“overseas supplier” means, in relation to any goods, a person carrying on outside Australia a business in the course of which a connexion in the course of trade between him and the goods subsisted.

---

---

**Amended by 1944, No. 113.**

(5.) A certificate under the hand of the Comptroller-General of Customs, or of any officer appointed by him to give such certificates, to the effect that goods bearing a mark specified in the certificate are or were essential imports shall be evidence of that fact for the purposes of this regulation.