

TITLE X.

PATENTS, DESIGNS, AND TRADE MARKS.

PART I.

PATENTS.

CHAPTER I.

APPLICATION FOR AND GRANT OF PATENT.

628. (Subst. 5-1957.) (1) An application for a patent Application.
for an invention may be made by any of the following persons,
that is to say :—

(a) by any person claiming to be the true and first
inventor of the invention ;

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

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

(2) An application for a patent may be made under paragraph (1) of this article by the personal representative of any deceased person who, immediately before his death, was entitled to make an application.

(3) Every application for a patent shall be made in the prescribed form and shall be filed at the Patent Office in the prescribed manner.

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

(5) Every application shall state that the applicant is in possession of the invention and shall name the person claiming to be the true and first inventor; and where the person so claiming is not the applicant or one of the applicants, the application shall contain a declaration that the applicant believes him to be the true and first inventor.

(6) A declaration required by this article may be either a statutory declaration or not, as may be prescribed.

629. (Subst. 5-1957.) (1) Every application for a patent shall be accompanied by either a complete specification or a provisional specification.

(2) Where an application for a patent is accompanied by a provisional specification, a complete specification shall be filed within twelve months from the date of filing of the application and if the complete specification is not so filed the application shall be deemed to be abandoned:

Provided that the complete specification may be filed at any time after twelve months but within fifteen months from the date aforesaid if a request to that effect is made to the Registrar and the prescribed fee paid on or before the date on which the specification is filed.

(3) Where two or more applications accompanied by provisional specifications have been filed in respect of inventions which are cognate or of which one is a modifica-

Complete
and pro-
visional
specifica-
tions.

tion of another, a single complete specification may, subject to the provisions of this and the next following article be filed in pursuance of those applications, or, if more than one complete specification has been filed, may with the leave of the Registrar be proceeded with in respect of those applications.

(4) Where an application for a patent is accompanied by a specification purporting to be a complete specification, the Registrar may, if the applicant so requests at any time before the acceptance of the specification, direct that it shall be treated for the purposes of this Title as a provisional specification, and proceed with the application accordingly.

(5) Where a complete specification has been filed in pursuance of an application for a patent accompanied by a provisional specification or by a specification treated by virtue of a direction under the last foregoing paragraph as a provisional specification, the Registrar may, if the applicant so requests at any time before the acceptance of the complete specification, cancel the provisional specification and post-date the application to the date of filing of the complete specification.

630. (Subst. 5-1957.) (1) Every specification, whether complete or provisional, shall describe the invention, and shall begin with a title indicating the subject to which the invention relates.

(2) Subject to any rules made by the Governor in Council under this Title, drawings may, and shall if the Registrar so requires, be supplied for the purposes of any specification, whether complete or provisional; and any drawing so supplied shall, unless the Registrar otherwise directs, be deemed to form part of the specification, and references in this Title to a specification shall be construed accordingly.

(3) Every complete specification —

(a) shall particularly describe the invention and the method by which it is to be performed;

Contents of
specifica-
tion.

(b) shall disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection ; and

(c) shall end with a claim or claims defining the scope of the invention claimed.

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

(5) Rules made by the Governor in Council under this Title may require that in such cases as may be prescribed by the rules, a declaration as to the inventorship of the invention, in such form as may be so prescribed, shall be furnished with the complete specification or within such period as may be so prescribed after the filing of that specification.

(6) Subject to the foregoing provisions of this article, a complete specification filed after a provisional specification may include claims in respect of developments or additions to the invention which was described in the provisional specification, being developments or additions in respect of which the applicant would be entitled under the provisions of article 628 of this Code to make a separate application for a patent.

(7) Where a complete specification claims a new substance, the claim shall be construed as not extending to that substance when found in nature.

Priority date
of claims of
complete
specification.

631. (Subst. 5-1957). (1) Every claim of a complete specification shall have effect from the date prescribed by this article in relation to that claim (in this Title referred to as the priority date) ; and a patent shall not be invalidated by reason only of the publication or use of the invention, so far as claimed in any claim of the complete specification, on or after the priority date of that claim, or by the grant of another patent upon a specification claiming the same invention in a claim of the same or later priority date.

(2) Where the complete specification is filed in pursuance of a single application accompanied by a pro-

visional specification or by a specification which is treated by virtue of a direction under paragraph (4) of article 628 of this Code as a provisional specification, and the claim is fairly based on the matter disclosed in that specification, the priority date of that claim shall be the date of filing of the application.

(3) Where the complete specification is filed or proceeded with in pursuance of two or more applications accompanied by such specifications as are mentioned in the last foregoing article, and the claim is fairly based on the matter disclosed in one of those specifications, the priority date of that claim shall be the date of filing of the application accompanied by that specification.

(4) Where, under the foregoing provisions of this article, any claim of a complete specification would, but for this provision, have two or more priority dates, the priority date of that claim shall be the earlier or earliest of those dates.

(5) In any case to which paragraphs (2) to (4) of this article do not apply, the priority date of a claim shall be the date of filing of the complete specification.

632. (Subst. 5-1957.) (1) When the complete specification has been filed in respect of an application for a patent, the application and specification or specifications shall be referred by the Registrar to the Crown Attorney.

Examina-
tion of
application.

(2) If the Crown Attorney reports that the application or any specification filed in pursuance thereof does not comply with the requirements of this Title or of any rules made by the Governor in Council thereunder, or that there is lawful ground of objection to the grant of a patent in pursuance of the application, the Registrar may either —

(a) refuse to proceed with the application ; or

(b) require the application or any such specification as aforesaid to be amended before he proceeds with the application.

(3) At any time after an application has been filed under this Title and before acceptance of the complete speci-

fication, the Registrar may, at the request of the applicant and upon payment of the prescribed fee, direct that the application shall be post-dated to such date as may be specified in the request :

Provided that no application shall be post-dated under this paragraph to a date later than six months from the date on which it was actually made or would, but for this paragraph, be deemed to have been made.

(4) Where an application or specification filed under this Title is amended before acceptance of the complete specification, the Registrar may direct that the application or specification shall be post-dated to the date on which it is amended, or, if it has been returned to the applicant, to the date on which it is refiled.

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

(6) An appeal shall lie to the Crown Attorney from any decision of the Registrar under paragraph (2) or paragraph (4) of this article.

633. (Subst. 5-1957.) (1) If it appears to the Registrar in the case of any application for a patent —

(a) that it is frivolous on the ground that it claims as an invention anything obviously contrary to well-established natural laws ; or

(b) that the use of the invention in respect of which the application is made would be contrary to law or morality ; or

(c) that it claims as an invention a substance capable of being used as food or medicine which is a

Refusal of application in certain cases.

mixture of known ingredients possessing only the aggregate of the known properties of the ingredients, or that it claims as an invention a process producing such a substance by mere admixture,

he may refuse the application.

(2) If it appears to the Registrar that any invention in respect of which an application for a patent is made might be used in any manner contrary to law, he may refuse the application unless the specification is amended by the insertion of such disclaimer in respect of that use of the invention, or such other reference to the illegality thereof, as the Registrar thinks fit.

(3) An appeal shall lie to the Crown Attorney from any decision of the Registrar under this article.

634. Previous to making a report which is adverse to the applicant, the Crown Attorney shall cause the latter or his representative to be notified that he intends making an adverse report but that before making such report he will hear the applicant (or his legal representative) at the Supreme Court on a date to be fixed by the Registrar.

Right of applicant to be heard.

At the appointed time the Crown Attorney shall hear the reasons advanced by the applicant (or his legal representative) should he attend, and thereafter shall report to the Registrar.

635. For the purpose of preparing his reports under this Title the Crown Attorney may call to his aid such scientific or other person as he may think fit.

Assistance and remuneration of experts.

The Registrar shall fix the remuneration to be paid such person and shall apply to the applicant for payment of the amount so fixed, and pending receipt thereof the Crown Attorney shall defer further consideration of his report.

636. (Subst. 5-1957.) (1) Unless a complete specification is accepted within twelve months from the date of the application, the application shall become void :

Acceptance and publication of complete specification.

Provided that where an application is made for an extension of time for the acceptance of a complete specification, the

Registrar shall, on payment of the prescribed fee, grant an extension of time to the extent applied for but not exceeding three months.

(2) The Registrar shall, when an application has been accepted, give notice thereof to the applicant.

(3) On the acceptance of the complete specification the Registrar shall advertise the acceptance; and the applications and specifications with the drawings, if any, shall be open to public inspection.

Effect of
acceptance
of complete
specification.

637. After the acceptance of a complete specification and until the date of sealing a patent in respect thereof, or the expiration of the time for sealing, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the acceptance of the complete specification: Provided that an applicant shall not be entitled to institute any proceeding for infringement until a patent for the invention has been granted to him.

Opposition
to grant of
patent.

638. (1) Any person may at any time within two months from the date of the advertisement of the acceptance of a complete specification give notice to the Registrar of opposition to the grant of the patent on any of the following grounds:—

(a) That the applicant obtained the invention from him, or from a person of whom he is the legal representative; or

(b) That the invention has been claimed in any complete specification for a patent which is or will be of prior date to the patent the grant of which is opposed, other than a specification deposited pursuant to an application made more than fifty years before the date of the application for such last-mentioned patent; or

(c) That the nature of the invention or the manner in which it is to be performed is not sufficiently or fairly described and ascertained in the complete specification; or

(d) That the complete specification describes or claims an invention other than that described in the provisional specification, and that such other invention forms the subject of an application made by the opponent in the interval between the leaving of the provisional specification and the leaving of the complete specification,

but on no other ground.

(2) Where such notice is given the Registrar shall give notice of the opposition to the applicant, and shall, on the expiration of those two months, after hearing the applicant and the opponent, if desirous of being heard, decide on the case.

(3) The decision of the Registrar shall be subject to appeal to the Crown Attorney who shall, if required, hear the applicant and the opponent, if the opponent is, in his opinion, a person entitled to be heard in opposition to the grant of the patent, and shall decide the case; and the Crown Attorney may if he thinks fit, obtain the assistance of an expert, who shall be paid such remuneration as the Crown Attorney with the consent of the Governor may determine.

639. (1) If there is no opposition, or, in case of opposition, if the determination is in favour of the grant of a patent, a patent shall, on payment of the prescribed fee, be granted to the applicant, or in the case of a joint application to the applicants jointly, and the Registrar shall cause the patent to be sealed with the seal of the Colony.

Grant and
sealing of
patent.

(2) A patent shall be sealed as soon as may be, and not after the expiration of fifteen months from the date of application, provided that:—

(a) Where the Registrar has allowed an extension of the time within which a complete specification may be left or accepted, a further extension of four months after the said fifteen months shall be allowed for the sealing of the patent.

(b) Where the sealing is delayed by an appeal to the Crown Attorney, or by opposition to the grant of

the patent, the patent may be sealed at such time as the Crown Attorney may direct.

(c) Where the patent is granted to the legal representative of an applicant who has died before the expiration of the time which would otherwise be allowed for sealing the patent, the patent may be sealed at any time within twelve months after the date of his death.

(d) Where in consequence of the neglect or failure of the applicant to pay any fee a patent cannot be sealed within the period allowed by this article, that period may, on payment of the prescribed fee and on compliance with the prescribed conditions, be extended to such an extent as may be prescribed.

Date of patent.

640. Except as otherwise expressly provided by this Title, a patent shall be dated and sealed as of the date of the application: Provided that no proceedings shall be taken in respect of an infringement committed before the publication of the complete specification.

Form of patent.

641. Every patent may be in the prescribed form and shall be granted for one invention only, but the specification may contain more than one claim; and it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention.

Fraudulent applications for patents.

642. (1) A patent granted to the true and first inventor shall not be invalidated by an application in fraud of him, or by provisional protection obtained thereon, or by any use or publication of the invention subsequent to that fraudulent application during the period of provisional protection.

(2) Where a patent has been revoked on the ground of fraud, the Registrar may, on the application of the true inventor made in accordance with the provisions of this Title, grant to him a patent in lieu of and bearing the same date as the patent so revoked:

Provided that no action shall be brought for any infringement of the patent so granted committed before the actual date when such patent was granted.

643. (1) Where the same applicant has put in two or more provisional specifications for inventions which are cognate or modifications one of the other, and has obtained thereby concurrent provisional protection for the same, and the Crown Attorney is of opinion that the whole of such inventions are such as to constitute a single invention and may properly be included in one patent, he may accept one complete specification in respect of the whole of such applications, and cause a single patent to be granted thereon.

Single patent for cognate inventions.

(2) Such patent shall bear the date of the earliest of such applications, but in considering the validity of the same and for the purpose of these provisions with respect to oppositions to the grant of patents, the Court or the Registrar, as the case may be, shall have regard to the respective dates of the provisional specifications relating to the several matters claimed therein.

CHAPTER II.

TERM OF PATENT.

644. (1) The term limited in every patent for the duration thereof shall, save as otherwise herein expressly provided, be fourteen years from its date.

Term of patent.

(2) A patent shall, notwithstanding anything therein or in this Title, cease if the patentee fails to pay the prescribed fees within the prescribed times; provided that the Registrar, upon the application of the patentee, shall, on receipt of such additional fee, not exceeding forty-eight dollars, as may be prescribed, enlarge the time to such an extent as may be applied for but not exceeding three months.

Fees.

(3) If any proceeding is taken in respect of an infringement of the patent committed after a failure to pay any fee within the prescribed time, and before any enlargement thereof, the Court before which the proceeding is

proposed to be taken may, if it thinks fit, refuse to award any damages in respect of such infringement.

Extension of term of patent.

645. (1) A patentee may, after advertising in the prescribed manner his intention to do so, present a petition to the Court praying that his patent may be extended for a further term, but such petition must be presented at least six months before the time limited for the expiration of the patent.

(2) Any person may give notice to the Court of objection to the extension.

(3) On the hearing of any petition under this article the patentee and any person who has given such notice of objection shall be made parties to the proceeding, and the Registrar shall be entitled to appear and be heard, and shall appear if so directed by the Court.

(4) The Court, in considering its decision, shall have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and all the circumstances of the case.

(5) If it appears to the Court that the patentee has been inadequately remunerated by his patent, the Court may by order extend the term of the patent for a further term not exceeding seven, or, in exceptional cases, fourteen years, or may order the grant of a new patent for such term as may be specified in the order and containing any restriction, conditions, and provisions as the Court may think fit.

Patents of addition.

646. (1) Where a patent for an invention has been applied for or granted, and the applicant or patentee, as the case may be, applies for a further patent in respect of any improvement in or modification of the invention, he may, if he think fit, in his application for the further patent, request that the term limited in that patent for the duration thereof be the same as that of the original patent or so much of that term as is unexpired.

(2) Where an application containing such a request is made, a patent (hereinafter referred to as a patent of addition) may be granted for such term as aforesaid.

(3) A patent of addition shall remain in force so long as the patent for the original invention remains in force, but no longer, and in respect of a patent of addition no fees shall be payable for renewal.

(4) The grant of a patent of addition shall be conclusive evidence that the invention is a proper subject for a patent of addition, and the validity of the patent shall not be questioned on the ground that the invention ought to have been the subject of an independent patent.

CHAPTER III.

RESTORATION OF LAPSED PATENTS.

647. (1) Where any patent has become void owing to the failure of the patentee to pay any prescribed fee within the prescribed time, the patentee may apply to the Registrar in the prescribed manner for an order for the restoration of the patent.

Restoration of lapsed patents.

(2) Every such application shall contain a statement of the circumstances which have led to the omission of the payment of the prescribed fee.

(3) If it appears from such statement that the omission was unintentional and that no undue delay has occurred in the making of the application, the Registrar shall advertise the application in the prescribed manner, and within such time as may be prescribed any person may give notice of opposition at the Registry of Patents.

(4) Where such notice is given the Registrar shall notify the applicant thereof.

(5) After the expiration of the prescribed period the Registrar shall hear the case and, subject to an appeal to the Court, issue an order either restoring the patent or dismissing the application: Provided that in every order under this article restoring a patent such provisions as may be prescribed shall be inserted for the protection of persons who may have availed themselves of the subject-matter of the patent after the patent had been announced as void in the *Gazette*.

CHAPTER IV.

AMENDMENT OF SPECIFICATION.

Amendment
of specifica-
tion by
Registrar.

648. (1) An applicant or a patentee may at any time, by request in writing left with the Registrar, seek leave to amend his specification, including drawings forming part thereof, by way of disclaimer, correction, or explanation, stating the nature of, and the reasons for, the proposed amendment.

(2) The request and the nature of the proposed amendment shall be advertised in the prescribed manner, and at any time within one month from its first advertisement any person may give notice to the Registrar of opposition to the amendment.

(3) Where such a notice is given the Registrar shall give notice of the opposition to the person making the request, and shall hear and decide the case.

(4) Where no notice of opposition is given, or the person so giving notice of opposition does not appear, the Registrar shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(5) The decision of the Registrar in either case shall be subject to an appeal to the Crown Attorney, who shall, if required, hear the person making the request to amend and, where notice of opposition has been given, the person giving the notice, if he is, in the opinion of the Crown Attorney, entitled to be heard in opposition to the request, and, where there is no opposition, the Registrar, and may make an order determining whether and subject to what conditions (if any) the amendment ought to be allowed.

(6) No amendment shall be allowed that would make the specification, as amended, claim an invention substantially larger than or substantially different from the invention claimed by the specification as it stood before amendment.

(7) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall be advertised in the prescribed manner, and shall in all courts and for all purposes be deemed to form part of the specification.

(8) This article shall not apply when and so long as any action for infringement or proceeding before the Court for the revocation of a patent is pending.

649. In any action for infringement of a patent or proceeding before the Court for a revocation of a patent the Court may by order allow the patentee to amend his specification by way of disclaimer in such manner, and subject to such terms as to costs, advertisements or otherwise, as the Court may think fit:

Amendment
of specifica-
tion by the
Court.

Provided that no amendment shall be so allowed that would make the specification, as amended, claim an invention substantially larger than, or substantially different from, the invention claimed by the specification as it stood before the amendment, and where an application for such an order is made to the Court notice of the application shall be given to the Registrar, and the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court.

650. Where an amendment of a specification by way of disclaimer, correction, or explanation, has been allowed, no damages shall be given in any action in respect of the use of the invention before the disclaimer, correction, or explanation, unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge.

Restriction
on recovery
of damages.

651. Every amendment of a specification shall be advertised forthwith in the *Gazette*, and in such other manner (if any) as the Registrar may direct.

Advertise-
ment of
amendment.

CHAPTER V.

COMPULSORY LICENCES AND REVOCATION.

652. 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:—

Court may
order
patentee
to grant
licences.

(1) An invention is not being worked in the Colony;

(2) The reasonable requirements of the public with respect to the invention cannot be supplied ; or

(3) 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.

Revocation
of patent.

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

(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 ;
or

(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.

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

(a) By the Crown Attorney or any person authorised by him ; or

(b) By any person alleging :—

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

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

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

CHAPTER VI.

LEGAL PROCEEDINGS.

654. (1) In an 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, shall be admitted in proof of any breach or objection of which particulars are not so delivered. Particulars.

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

655. In an action or proceeding for infringement or revocation of a patent, the Court may, if it think fit, and shall on the request of either of the parties to the proceeding, call in the aid of an assessor specially qualified, and try the case wholly or partially with his assistance. Hearing with
assessor.

656. A defendant in an action for infringement of a patent, if entitled to present a petition to the Court for the revocation of the patent, may, without presenting such a petition, apply by way of counterclaim in the action for the revocation of the patent. Power to
counter-
claim for
revocation in
an action
for in-
fringement.

657. A patentee shall not be entitled to recover any damages in respect of any infringement of a patent granted after the commencement of this Code from any defendant who proves that at the date of the infringement he was not aware, nor had reasonable means of making himself aware, of the existence of the patent, and the marking of an article with the word "patent," "patented," or any word or words expressing or implying that a patent has been obtained for the article, stamped, engraved, impressed on, or otherwise applied to the article, shall not be deemed to constitute notice of the existence of the patent unless the word or words are accompanied by the year and number of the patent : Exemption
of innocent
infringer
from lia-
bility for
damages.

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

Order for inspection, etc., in action.

658. In an action for infringement of a patent, the Court may on the application of either party make such order for an injunction, inspection or account, and impose such terms and give such directions respecting the same and the proceedings thereon as may seem fit.

Certificate of validity questioned and costs thereon.

659. In an action for infringement of a patent, the Court may certify that the validity of the patent came in question; and, if the Court 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, unless the Court otherwise directs, have his full costs, charges, and expenses as between solicitor and client.

Remedy in case of groundless threats of legal proceedings.

660. Where any person claiming to be the patentee of an invention, by circulars, advertisements, or otherwise threatens any other person with any legal proceedings or liability in respect of any alleged infringement of the patent, any person aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as he has sustained thereby, if the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats:

Provided that this article shall not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his patent.

CHAPTER VIA.

(No. 19-1924 as am. by No. 14-1956).

REGISTRATION OF UNITED KINGDOM PATENTS.

Registration of United Kingdom Patents.

660A. (1) Any person being the grantee of a patent in the United Kingdom or any person deriving his right from such grantee by assignment, transmission or other operation of law may apply within three years from the date of issue

of the patent to have such patent registered in the Colony. Where any partial assignment or transmission has been made, all proper parties shall be joined in the application for registration.

(2) Every application under this article shall be accompanied by a certified copy (or two certified copies, if desired) 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.

(3) Upon such application being received together with the documents mentioned in paragraph (2) of this article the Registrar of Patents shall issue a Certificate of Registration.

(4) 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 patent had been issued in the United Kingdom with an extension to the Colony.

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

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

(6) (a) The Supreme 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, 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.

(b) Such grounds shall be deemed to include the manufacture, use or sale of the invention in the Colony before the priority date applicable to the patent in the United Kingdom, but not to include the manufacture, use or sale of the invention in the Colony by some person or persons after the priority date applicable to the patent in the United Kingdom and before the date of the issue of the Certificate of Registration under paragraph (3) of this article.

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

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

(8) 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 of Patents for the entry on the register of such assignment, transmission, or other instrument affecting the title, or giving an interest therein.

Rules.

(9) The Governor in Council may make such general rules and do such things as he may think expedient, subject to the provisions of this article, for regulating procedure under this article, and for prescribing the fees to be paid in respect of proceedings under this article.

PART II.

DESIGNS.

CHAPTER I.

REGISTRATION OF DESIGNS.

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

Application
for registra-
tion of
designs.

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

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

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

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

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

Registration
of designs
in new
classes.

(a) On the ground of the design not being a new and original design, by reason only that it was so previously registered; or

(b) On the ground of the design having been previously published in the Colony, by reason only that it has been applied to goods of any class in which it was so previously registered.

Certificate of Registration.

663. (1) The Registrar shall grant a Certificate of Registration to the proprietor of the design when registered.

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

United Kingdom Designs.

Protection of designs registered in United Kingdom.

663A. (Ad. 16-1938.) (1) Subject to the provisions of this article, the registered proprietor of any design registered in the United Kingdom under the Patents and Designs Acts 1907 to 1932 or any Act amending or substituted for those Acts shall enjoy in the Colony the like privileges and rights as though the Certificate of Registration in the United Kingdom had been issued with an extension to the Colony.

Innocent infringement.

(2) The registered proprietor of a design shall not be entitled to recover any damages in respect of any infringement of copyright in a design from any defendant who proves that at the date of the infringement he was not aware nor had any reasonable means of making himself aware of the existence of the registration of the design:

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

Power of Court to declare no exclusive right acquired.

(3) The Court shall have power upon the application of any person who alleges that his interests have been prejudicially affected to declare upon any of the grounds upon which the United Kingdom registration might be cancelled under the law for the time being in force in the United Kingdom that exclusive privileges and rights in a design have not been acquired in the Colony under the provisions of this article.

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.

CHAPTER II.

COPYRIGHT IN REGISTERED DESIGNS.

664. (1) When a design is registered, the registered proprietor of the design shall have copyright in the design during five years from the date of registration.

Copyright on registration.

(2) If within the prescribed time before the expiration of the said five years application for the extension of the period of copyright is made to the Registrar in the prescribed manner, the Registrar shall on payment of the prescribed fee extend the period of copyright for a second period of five years from the expiration of the original period of five years.

(3) If within the prescribed time before the expiration of such second period of five years application for the extension of the period of copyright is made to the Registrar in the prescribed manner, the Registrar may, on payment of the prescribed fee, extend the period of copyright for a third period of five years from the expiration of the second period of five years.

665. (1) Before delivery on sale of any articles to which a registered design has been applied, the proprietor shall:—

Requirements before delivery on sale.

(a) (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 the copyright in the design shall cease; and

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

(2) Where a representation is made to the Governor in Council by or on behalf of any trade or industry that in the interest of the trade or industry it is expedient to dispense with or modify as regards any class or description of articles any of the requirements of this article as to marking, the Governor in Council may dispense with or modify such requirements as regards any such class or description of articles to such extent and subject to such conditions as may seem desirable.

Effect of disclosure on copyright.

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

Inspection of registered designs.

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

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

(2) After the expiration of the copyright in a design, or such shorter period as aforesaid, the design shall be open

to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

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

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

Information as to existence of copyright.

669. 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 such design shall cease.

Ceasing of copyright.

CHAPTER III.

LEGAL PROCEEDINGS.

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

Piracy of registered design.

(a) For the purposes of sale to apply or cause to be applied to any article in any class of goods in which the design is registered the design or any fraudulent or obvious imitation thereof, except with the licence or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or

(b) Knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article without the consent of the registered proprietor to publish or expose or cause to be published or exposed for sale that article.

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

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

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

Application
to designs of
certain pro-
visions as to
patents.

671. The provisions of this Title with regard to certificates of the validity of a patent, and to the remedy in case of groundless threats of legal proceedings by a patentee, shall apply in the case of registered designs in like manner as they apply in the case of patents, with the substitution of references to the copyright in a design for references to a patent, and of references to the proprietor of a design for references to the patentee, and of references to the design for references to the invention.

PART III.

TRADE MARKS.

CHAPTER I.

REGISTRABLE TRADE MARKS.

Trade mark
must be for
particular
goods.

672. A trade mark must be registered in respect of particular goods or classes of goods.

Registrable
trade marks.

673. (Am. 5-1957.) (1) A registrable trade mark must contain or consist of at least one of the following essential particulars :—

(a) The name of a company, individual, or firm represented in a special or particular manner ;

(b) The signature of the applicant for registration or some predecessor in his business ;

(c) An invented word or invented words ;

(d) A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname ;

(e) Any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the above particulars (a), (b), (c), and (d), shall not, except by order of the Crown Attorney or the Court, be deemed a distinctive mark :

Provided always that any special or distinctive word or words, letter, numeral, or combination of letters or numerals used as a trade mark by the applicant or his predecessors in business before the commencement of this Code, which has continued to be used (either in its original form or with additions or alterations not substantially affecting the identity of the same) down to the date of the application for registration shall be registrable as a trade mark under this Title.

(2) For the purposes of this article “distinctive” means adapted, in relation to the goods in respect of which a trade mark is registered or proposed to be registered, to distinguish goods with which the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of which no such connection subsists, either generally or, where the trade mark is registered or proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(3) In determining whether a trade mark is adapted to distinguish as aforesaid the tribunal may have regard to the extent to which —

(a) the trade mark is inherently adapted to distinguish as aforesaid ; and

(b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact adapted to distinguish as aforesaid.

Coloured
trade marks.

674. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any tribunal having to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Restriction
on registra-
tion.

675. It shall not be lawful to register as a trade mark or part of a trade mark any matter, the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a Court of Justice, or would be contrary to law or morality, or any scandalous design.

CHAPTER II.

REGISTRATION OF TRADE MARKS.

Application
for registra-
tion.

676. (1) Any person claiming to be the proprietor of a trade mark who is desirous of registering the same must apply in writing to the Registrar in the prescribed manner.

(2) Subject to the provisions of this Title the Registrar may refuse such application, or may accept it absolutely or subject to conditions, amendments, or modifications.

(3) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Crown Attorney or to the Court at the option of the applicant.

(4) An appeal under this article shall be made in the prescribed manner, and on such appeal the Crown Attorney or the Court, as the case may be, shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions, amendments, or modifications, if any, the application is to be accepted.

(5) Appeals under this article shall be heard on the materials so stated by the Registrar to have been used by him in arriving at his decision, and no further grounds of objection to the acceptance of the application shall be allowed

to be taken by the Registrar, other than those stated by him, except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.

(6) The Registrar or the Crown Attorney or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as they may think fit.

677. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the prescribed manner. Such advertisement shall set forth all conditions subject to which the application has been accepted.

Advertise-
ment of
application.

678. (1) Any person may, within the prescribed time from the date of the advertisement of an application for the registration of a trade mark, give notice to the Registrar of opposition to such registration.

Opposition
to registra-
tion.

(2) Such notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.

(3) The Registrar shall send a copy of such notice to the applicant, and within the prescribed time after the receipt of such notice, the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement, the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions, registration is to be permitted.

(5) The decision of the Registrar shall be subject to appeal to the Court or, with the consent of the parties, to the Crown Attorney.

(6) An appeal under this article shall be made in the prescribed manner, and on such appeal the Crown Attorney or the Court, as the case may be, shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(7) On the hearing of any such appeal any party may either in the manner prescribed or by special leave of the tribunal bring forward further material for the consideration of the tribunal.

(8) In proceedings under this article no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar other than those stated by the opponent as hereinabove provided except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.

(9) In any appeal under this article, the tribunal may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

(10) The Registrar, or, in the case of an appeal to the Crown Attorney, the Crown Attorney shall have power in proceedings under this article to award to any party such costs as they may consider reasonable, and to direct how and by what parties they are to be paid.

(11) If a party giving notice of opposition or of appeal neither resides nor carries on business in the Colony, the tribunal may require such party to give security for costs of the proceedings before it relative to such opposition or appeal, and in default of such security being duly given may treat the opposition or appeal as abandoned.

679. If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the Crown Attorney or the Court, in deciding whether such trade mark shall be entered or shall remain upon the register, may require, as a condition of its being upon the register, that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark, or of all or any portion of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may consider needful for the purpose of defining his rights under such registration: Provided always that no disclaimer upon the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made. Disclaimers.

680. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or having been opposed the opposition has been decided in favour of the applicant, the Registrar shall, unless the Crown Attorney otherwise direct, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the application for registration, and such date shall be deemed for the purposes of this Title to be the date of registration. Date of registration.

681. On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark under the hand of the Registrar, and sealed with the seal of the Colony. Certificate of registration.

682. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in such notice. Non-completion of registration.

CHAPTER III.

IDENTICAL AND ASSOCIATED MARKS.

*Identical Trade Marks*Identical
marks.

683. Except by order of the Court or in the case of trade marks in use before the commencement of this Code, no trade mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor which is already on the register with respect to such goods or description of goods, or so nearly resembling such a trade mark as to be calculated to deceive.

Rival claims
to identical
marks.

684. Where each of several persons claims to be proprietor of the same trade mark, or of nearly identical trade marks in respect of the same goods or description of goods, and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the Court, or have been settled by agreement in a manner approved by him or (on appeal) by the Crown Attorney.

Concurrent
user.

685. In case of honest concurrent user or of other special circumstances which, in the opinion of the Court, make it proper so to do, the Court may permit the registration of the same trade mark, or of nearly identical trade marks, for the same goods or description of goods by more than one proprietor subject to such conditions and limitations, if any, as to mode or place of user or otherwise, as it may think it right to impose.

*Associated Trade Marks.*Associated
trade marks.

686. If application be made for the registration of a trade mark so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal hearing the application may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks.

687. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately he may apply to register the same as separate trade marks. Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks and shall be entered on the register as such, but the user of the whole trade mark shall for the purposes of this Title be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains. Combined.
trade marks.

688. When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of — Series of
trade marks.

(a) Statements of the goods for which they are respectively used or proposed to be used ; or

(b) Statements of number, price, quality, or names of places ; or

(c) Other matter of a non-distinctive character which does not substantially affect the identity of the trade mark ; or

(d) Colour ;

seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

689. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks. Provided that where under the provisions of this Title user of a registered trade mark is required to be proved for any purpose, the tribunal may if and so far as it shall think right accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user. Assignment
and user of
associated
trade marks.

United Kingdom Trade Marks.

Application
for registra-
tion.1 & 2 Geo.
VI, c. 22.Procedure on
application.Issue of
certificate.Privileges of
proprietor.Duration of
privileges.

690. (Subst. 27-1939.) (1) Any person being the registered proprietor of a trade mark in the United Kingdom by virtue of an entry in the register of trade marks kept under the Trade Marks Act, 1938, or any Act amending or substituted for that Act, or any person deriving title from such registered proprietor by assignment or other mode of transfer, may apply at any time during the existence of the registration in the United Kingdom to have such trade mark registered in the Colony in respect of some or all of the goods comprised in the United Kingdom registration.

(2) An application for registration of a trade mark under this article shall be made to the Registrar and accompanied by a certified representation of the trade mark and a certificate of the Comptroller General of the United Kingdom Patent Office (under his title of Registrar of Trade Marks) giving full particulars of the registration of the trade mark in the United Kingdom.

(3) Upon such application being lodged, together with the documents mentioned in the preceding paragraph of this article, the Registrar shall enter the prescribed particulars in the register, and shall issue a Certificate of Registration to the applicant, who shall then be the registered proprietor in the Colony of the trade mark in respect of the goods entered in the register.

(4) Subject to the provisions of this article, a registered proprietor shall have in the Colony such privileges and rights in the use of the trade mark in respect of the goods entered in the register as *mutatis mutandis* would be conferred on him by the law for the time being in force in the United Kingdom.

(5) The privileges and rights conferred by paragraph 4 of this article shall date from the date of registration in the United Kingdom and shall continue in force, subject to the provisions of paragraph 13 of this article, for so long as the registration in the United Kingdom remains in force in respect of the goods for which the trade mark is registered in the Colony:

Provided that no action for infringement of the trade mark shall be entertained in respect of any use of the trade mark prior to the date of issue of the Certificate of Registration in the Colony.

(6) Nothing in this article shall be deemed to affect any right of action against any person for passing off goods as those of another person or any remedy in respect thereof.

(7) 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, to declare on any of the grounds *mutatis mutandis* on which the United Kingdom registration might be cancelled under the law for the time being in force in the United Kingdom that the exclusive privileges and rights have not been acquired.

(8) Subject to the provisions of this article, where a person becomes entitled by assignment or other mode of transfer to the privileges and rights conferred on a registered proprietor by this article, the Registrar shall, on application being made in the prescribed manner, and on proof of title to his satisfaction, cause such person to be entered in the register as subsequent registered proprietor of the trade mark.

(9) Any person entered in the United Kingdom Register of Trade Marks under section 28 of the Trade Marks Act, 1938, as a registered user in respect of any goods of a trade mark in respect of which a Certificate of Registration under this article is in force may apply to be registered in the Colony as a registered user of the mark in respect of some or all of such goods, subject to any conditions or restrictions entered in the United Kingdom Register.

(10) Upon such application being lodged, together with a certificate of the United Kingdom Registrar of Trade Marks giving full particulars of the entry in the United Kingdom Register under the said section 28, the Registrar shall cause the applicant to be entered in the register of the Colony as a registered user of the trade mark, and on such entry the registered user shall be entitled in the Colony, subject to the aforesaid conditions and restrictions, to such privileges and rights in respect of the goods for which he

Right of
action for
passing off.Powers of
Court.Assignment
of privileges.Application
by registered
user.
1 & 2 Geo.
VI, c. 22.Entry in
register.

is entered as *mutatis mutandis* would be conferred on him by the law for the time being in force in the United Kingdom.

Powers of
Governor in
Council.

(11) The Governor in Council may make such rules and do such things as he may think expedient, subject to the provisions of this article, for regulating procedure under this article, and prescribing the fees to be paid in respect of proceedings under this article, and generally for prescribing anything which by this article is to be prescribed.

Keeping and
inspection of
register.

(12) (a) There shall be kept in the Registrar's Office a register in which shall be entered in the prescribed form all matters which are by this article required to be registered.

(b) Such register shall be opened to inspection at all hours during which the Registrar's Office is open.

Renewal of
registration.

(13) If the registration in the United Kingdom of a trade mark registered under this article is renewed, the registered proprietor may, within such time after the date of renewal in the United Kingdom as may be prescribed, notify the Registrar, who shall then on sufficient evidence thereof and on payment of the prescribed fee, renew the registration in the register in the prescribed manner. If the registration in the register is not so renewed it shall be cancelled by the Registrar.

Powers of
Registrar.

(14) 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 trade mark or of a registered user thereunder either wholly or as regards any particular goods in respect of which the trade mark or the registered user is registered ;

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

(c) enter in the register any change in the name, description or address of the person who is registered as proprietor or user of a trade mark.

Special Trade Marks.

691. (Am. 5-1957.) 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 Crown Attorney, if and so long as he is satisfied that such association or person is competent to certify as aforesaid, 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 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 Crown Attorney.

Standard-
isation.

Defensive Trade Marks.

(Ad. 5-1957.)

691A. (1) Where a trade mark consisting of an invented word or invented words has become so well known as respects any goods in respect of which it is registered and in relation to which it has been used that the use thereof in relation to other goods would be likely to be taken as indicating a connection in the course of trade between those goods and a person entitled to use the trade mark in relation to the first-mentioned goods, then, notwithstanding that the proprietor registered in respect of the first-mentioned goods does not use or propose to use the trade mark in relation to those other goods and notwithstanding anything in article 698, the trade mark may, on the application in the prescribed manner of the proprietor registered in respect of the first-mentioned goods, be registered in his name in respect of those other goods as a defensive trade mark and, while so registered, shall not be liable to be taken off the register in respect of those goods under article 698.

Defensive
registration
of well
known trade
marks.

(2) The registered proprietor of a trade mark may apply for the registration thereof in respect of any goods as a

defensive trade mark notwithstanding that it is already registered in his name in respect of those goods otherwise than as a defensive trade mark, or may apply for the registration thereof in respect of any goods otherwise than as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods as a defensive trade mark, in lieu in each case of the existing registration.

(3) A trade mark registered as a defensive trade mark and that trade mark as otherwise registered in the name of the same proprietor shall, notwithstanding that the respective registrations are in respect of different goods, be deemed to be, and shall be registered as, associated trade marks.

(4) On application by any person aggrieved to the Court, the registration of a trade mark as a defensive trade mark may be cancelled on the ground that the requirements of paragraph (1) of this article are no longer satisfied in respect of any goods in respect of which the trade mark is registered in the name of the same proprietor otherwise than as a defensive trade mark, or may be cancelled as respects any goods in respect of which it is registered as a defensive trade mark on the ground that there is no longer any likelihood that the use of the trade mark in relation to those goods would be taken as giving the indication mentioned in paragraph (1) of this article.

(5) The Registrar may at any time cancel the registration as a defensive trade mark of a trade mark of which there is no longer any registration in the name of the same proprietor otherwise than as a defensive trade mark.

(6) Except as otherwise expressly provided in this article, the provisions of this Title shall apply in respect of the registration of trade marks as defensive trade marks and of trade marks so registered as they apply in other cases.

CHAPTER IV.

ASSIGNMENT AND RENEWAL.

Assignment and Transmission.

692. (Subst. 5-1957.) (1) Notwithstanding any rule of law or equity to the contrary, a registered trade mark shall

be, and shall be deemed always to have been, assignable and transmissible either in connection with the goodwill of a business or not. assignment and transmission.

(2) A registered trade mark shall be, and shall be deemed always to have been, assignable and transmissible in respect either of all the goods in respect of which it is registered, or was registered, as the case may be, or of some (but not all) of those goods.

(3) The provisions of the two foregoing paragraphs shall have effect in the case of an unregistered trade mark used in relation to any goods as they have effect in the case of a registered trade mark registered in respect of any goods, if at the time of the assignment or transmission of the unregistered trade mark it is or was used in the same business as a registered trade mark, and if it is or was assigned or transmitted at the same time and to the same person as that registered trade mark and in respect of goods all of which are goods in relation to which the unregistered trade mark is or was used in that business and in respect of which that registered trade mark is or was assigned or transmitted.

(4) Notwithstanding anything in the foregoing paragraphs, a trade mark shall not be, or be deemed to have been, assignable or transmissible in a case in which as a result of an assignment or transmission there would in the circumstances subsist, or have subsisted, whether under the common law or by registration, exclusive rights in more than one of the persons concerned to the use, in relation to the same goods or description of goods, of trade marks nearly resembling each other or of identical trade marks, if, having regard to the similarity of the goods and of the trade marks, the use of the trade marks in exercise of those rights would be, or have been, likely to deceive or cause confusion :

Provided that, where a trade mark is, or has been, assigned or transmitted in such a case as aforesaid, the assignment or transmission shall not be deemed to be, or to have been, invalid under this paragraph if the exclusive rights subsisting as a result thereof in the persons concerned respectively are, or were, having regard to limitations imposed thereon, such

as not to be exercisable by two or more of those persons in relation to goods to be sold, or otherwise traded in, within the Colony (otherwise than for export therefrom) or in relation to goods to be exported to the same market outside the Colony.

(5) The proprietor of a registered trade mark who proposes to assign it in respect of any goods in respect of which it is registered may submit to the Registrar in the prescribed manner a statement of case setting out the circumstances, and the Registrar may issue to him a certificate stating whether, having regard to the similarity of the goods and of the trade marks referred to in the case, the proposed assignment of the first-mentioned trade mark would or would not be invalid under the last foregoing paragraph, and a certificate so issued shall, subject to the provisions of this article as to appeal and unless it is shown that the certificate was obtained by fraud or misrepresentation, be conclusive as to the validity or invalidity under the last foregoing paragraph of the assignment in so far as such validity or invalidity depends upon the facts set out in the case, but, as regards a certificate in favour of validity, only if application for the registration under article 716 of this Code of the title of the person becoming entitled is made within six months from the date on which the certificate is issued.

(6) Notwithstanding anything in paragraphs (1) to (3) of this article, a trade mark shall not, on or after the coming into operation of this article, be assignable or transmissible in a case in which as a result of an assignment or transmission thereof there would in the circumstances subsist, whether under the common law or by registration, an exclusive right in one of the persons concerned to the use of the trade mark limited to use in relation to goods to be sold, or otherwise traded in, in a place or places in the Colony, and an exclusive right in another of those persons to the use of a trade mark nearly resembling the first-mentioned trade mark or of an identical trade mark in relation to the same goods or description of goods limited to use in relation to goods to be sold, or otherwise traded in, in another place or other places in the Colony:

Provided that, on application in the prescribed manner by the proprietor of a trade mark who proposes to assign it, or of a person who claims that a trade mark has been transmitted to him or to a predecessor in title of his on or after the coming into operation of this article, in any such case, the Registrar, if he is satisfied that in all the circumstances the use of the trade marks in exercise of the said rights would not be contrary to the public interest, may approve the assignment or transmission, and an assignment or transmission so approved shall not be deemed to be, or to have been, invalid under this paragraph or under paragraph (4) of this article, so, however, that in the case of a registered trade mark this provision shall not have effect unless application for the registration under paragraph (1) of article 716 of this Code of the title of the person becoming entitled is made within six months from the date on which the approval is given or, in the case of a transmission, was made before that date.

(7) Where an assignment in respect of any goods of a trade mark that is at the time of the assignment used in a business in those goods is made, on or after the coming into operation of this article, otherwise than in connection with the goodwill of that business, the assignment shall not take effect until the following requirements have been satisfied, that is to say, the assignee must, not later than the expiration of six months from the date on which the assignment is made or within such extended period, if any, as the Registrar may allow, apply to him for directions with respect to the advertisement of the assignment, and must advertise it in such form and manner and within such period as the Registrar may direct.

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

693. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of such person does not pass to one successor but is divided, the Registrar may (subject to the provisions of this Title as to associated trade marks), on the application of the parties interested, permit

Apportionment of marks on dissolution of partnership.

an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, as he may think expedient.

Renewal of Registration.

Duration of registration. 694. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Title.

Renewal of registration. 695. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed "the expiration of the last registration."

Procedure on expiry of period of registration. 696. At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf such conditions have not been duly complied with, the Registrar may remove such trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

Status of unrenewed trade mark. 697. (Am. 5-1957.) Where a trade mark has been removed from the register for non-payment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during 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 there had been no *bona fide* trade user of such trade mark during the two years immediately preceding such removal, or that no deception or confusion would be likely to arise from the use of the trade

mark that is the subject of the application for registration by reason of any previous use of the trade mark that has been removed.

Use and non-use.

698. (Subst. 5-1957.) (1) Subject to the provisions of article 691A, a registered trade mark may be taken off the register in respect of any of the goods in respect of which it is registered on application by any person aggrieved to the Court, on the ground either —

Removal from register and imposition of limitations on ground of non-use.

(a) that the trade mark was registered without any *bona fide* intention on the part of the applicant for registration that it should be used in relation to those goods by him, and that there has in fact been no *bona fide* use of the trade mark in relation to those goods by any proprietor thereof for the time being up to the date one month before the date of the application ; or

(b) that up to the date one month before the date of the application a continuous period of five years or longer elapsed during which the trade mark was a registered trade mark and during which there was no *bona fide* use thereof in relation to those goods by any proprietor thereof for the time being :

Provided that (except where the applicant has been permitted under article 685 of this Code to register an identical or nearly resembling trade mark in respect of the goods in question or where the Court is of opinion that he might properly be permitted so to register such a trade mark) the Court may refuse an application made under subparagraph (a) or (b) of this paragraph in relation to any goods, if it is shown that there has been, before the relevant date or during the relevant period, as the case may be, *bona fide* use of the trade mark by any proprietor thereof for the time being in relation to goods of the same description, being goods in respect of which the trade mark is registered.

(2) Where in relation to any goods in respect of which a trade mark is registered —

(a) the matters referred to in subparagraph (b) of the foregoing paragraph are shown so far as regards

non-use of the trade mark in relation to goods to be sold, or otherwise traded in, in a particular place in the Colony (otherwise than for export from the Colony), or in relation to goods to be exported to a particular market outside the Colony; and

(b) a person has been permitted under article 685 of this Code to register an identical or nearly resembling trade mark in respect of those goods under a registration extending to use in relation to goods to be sold, or otherwise traded in, in that place (otherwise than for export from the Colony), or in relation to goods to be exported to that market, or the Court is of opinion that he might properly be permitted so to register such a trade mark;

on application by that person the Court may impose on the registration of the first-mentioned trade mark such limitations as the Court thinks proper for securing that that registration shall cease to extend to such use as last aforesaid.

(3) An applicant shall not be entitled to rely for the purposes of subparagraph (b) of paragraph (1), or for the purposes of paragraph (2), of this article on any non-use of a trade mark that is shown to have been due to special circumstances in the trade and not to any intention not to use or to abandon the trade mark in relation to the goods to which the application relates.

CHAPTER IVA.

(Ad. 5-1957.)

REGISTERED USERS.

698A. (1) Subject to the provisions of this article, a person other than the proprietor of a trade mark may be registered as a registered user thereof in respect of all or any of the goods in respect of which it is registered (otherwise than as a defensive trade mark) and either with or without conditions or restrictions.

The use of a trade mark by a registered user thereof in relation to goods with which he is connected in the course of trade and in respect of which for the time being the trade

mark remains registered and he is registered as a registered user, being use such as to comply with any conditions or restrictions to which his registration is subject, is in this Title referred to as the "permitted use" thereof.

(2) The permitted use of a trade mark shall be deemed to be use by the proprietor thereof, and shall be deemed not to be use by a person other than the proprietor, for the purposes of article 698 of this Code and for any other purpose for which such use is material under this Title or at common law.

(3) Subject to any agreement subsisting between the parties, a registered user of a trade mark shall be entitled to call upon the proprietor thereof to take proceedings to prevent infringement thereof, and, if the proprietor refuses or neglects to do so within two months after being so called upon, the registered user may institute proceedings for infringement in his own name as if he were the proprietor, making the proprietor a defendant.

A proprietor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(4) Where it is proposed that a person should be registered as a registered user of a trade mark, the proprietor and the proposed registered user must apply in writing to the Registrar in the prescribed manner and must furnish him with a statutory declaration made by the proprietor, or by some person authorised to act on his behalf and approved by the Registrar, —

(a) giving particulars of the relationship, existing or proposed, between the proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restriction as to persons for whose registration as registered users application may be made;

(b) stating the goods in respect of which registration is proposed ;

(c) stating any conditions or restrictions proposed with respect to the characteristics of the goods, to the mode or place of permitted use, or to any other matter ; and

(d) stating whether the permitted use is to be for a period or without limit of period, and, if for a period, the duration thereof ;

and with such further documents, information or evidence as may be required under the rules or by the Registrar.

(5) When the requirements of the last foregoing paragraph have been complied with, if the Registrar, after considering the information furnished to him under that paragraph, is satisfied that in all the circumstances the use of the trade mark in relation to the proposed goods or any of them by the proposed registered user subject to any conditions or restrictions which the Registrar thinks proper would not be contrary to the public interest, the Registrar may register the proposed registered user as a registered user in respect of the goods as to which he is so satisfied subject as aforesaid.

(6) The Registrar shall refuse an application under the foregoing provisions of this article if it appears to him that the grant thereof would tend to facilitate trafficking in a trade mark.

(7) The Registrar shall, if so required by an applicant, take steps for securing that information given for the purposes of an application under the foregoing provisions of this article (other than matter entered in the register) is not disclosed to rivals in trade.

(8) Without prejudice to the provisions of article 717 of this Code, the registration of a person as a registered user —

(a) may be varied by the Registrar as regards the goods in respect of which, or any conditions or restrictions subject to which, it has effect, on the application in writing in the prescribed manner of the registered proprietor of the trade mark to which the registration relates ;

(b) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trade mark ; or

(c) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, that is to say, —

(i) that the registered user has used the trade mark otherwise than by way of the permitted use, or in such a way as to cause, or to be likely to cause, deception or confusion ;

(ii) that the proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for the registration, or that the circumstances have materially changed since the date of the registration ;

(iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested.

(9) Provision shall be made by the rules for the notification of the registration of a person as a registered user to any other registered user of the trade mark and for the notification of an application under the last foregoing paragraph to the registered proprietor and each registered user (not being the applicant) of the trade mark, and for giving to the applicant on such an application, and to all persons to whom such an application is notified and who intervene in the proceedings in accordance with the rules, an opportunity of being heard.

(10) The Registrar may at any time cancel the registration of a person as a registered user of a trade mark in respect of any goods in respect of which the trade mark is no longer registered.

(11) Any decision of the Registrar under the foregoing provisions of this article shall be subject to appeal to the Court.

(12) Nothing in this article shall confer on a registered user of a trade mark any assignable or transmissible right to the use thereof.

CHAPTER V.

EFFECT OF REGISTRATION.

Powers of
registered
proprietor.

699. (1) The person for the time being entered in the register as proprietor of a trade mark shall, subject to any rights appearing from such register to be vested in any other person, have power to assign the same, and to give effectual receipts for any consideration for such assignment.

(2) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

Rights of
proprietor of
trade mark.

700. (Subst. 5-1957.) (1) Subject to the provisions of this article, of the proviso to article 702, and of article 705 of this Code, the registration of a person as proprietor of a trade mark in respect of any goods shall, if valid, give or be deemed to have given to that person the exclusive right to the use of the trade mark in relation to those goods and, without prejudice to the generality of the foregoing words, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a registered user thereof using by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either —

(a) as being use as a trade mark ; or

(b) in a case in which the use is use upon the goods or in physical relation thereto or in an advertising circular or other advertisement issued to the public, as importing a reference to some person having the right either as proprietor or as registered user to use the trade mark or to goods with which such a person as aforesaid is connected in the course of trade.

(2) The right to the use of a trade mark given by registration as aforesaid shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in in any place, in relation to goods to be exported to any market, or in any other circumstances, to which, having regard to any such limitations, the registration does not extend.

(3) The right to the use of a trade mark given by registration as aforesaid shall not be deemed to be infringed by the use of any such mark as aforesaid by any person —

(a) in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark if, as to those goods or a bulk of which they form part, the proprietor or the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it, or has at any time expressly or impliedly consented to the use of the trade mark ; or

(b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the trade mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact a connection in the course of trade between any person and the goods.

(4) The use of a registered trade mark, being one of two or more registered trade marks that are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration as aforesaid, shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

701. In all legal proceedings relating to a registered trade mark the fact that a person is registered as proprietor of such trade mark shall be *prima facie* evidence of the

Registration
to be *prima
facie* evi-
dence of
validity.

validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

Registration to be conclusive after seven years.

702. In all legal proceedings relating to a registered trade mark the original registration of such trade mark shall after the expiration of seven years from the date of such original registration (or seven years from the commencement of this Code, whichever shall last happen) be taken to be valid in all respects unless such original registration was obtained by fraud, or unless the trade mark offends against the provisions of article 675 of this Code :

Provided that nothing herein shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connection with goods upon or in connection with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user of the first-mentioned trade mark by the proprietor thereof or his predecessor in business, or to object (on such user being proved) to such person being put upon the register for such similar trade mark in respect of such goods in case of concurrent user.

Unregistered trade mark.

703. No persons shall be entitled to institute any proceeding to prevent or to recover damages for the infringement of an unregistered trade mark unless such trade mark was in use before the commencement of this Code, and has been refused registration under this Title. The Registrar may, on request, grant a certificate that such registration has been refused.

Infringement.

704. In an action for the infringement of a trade mark, the Court may admit evidence of the usages of the trade in respect to the get-up of the goods for which the trade mark is registered, and of any trade marks or get-up legitimately used in connection with such goods by other persons.

User of name, address or description of goods.

705. No registration made hereunder shall interfere with any *bona fide* use by a person of his own name or place of business, or that of any of his predecessors in business,

or the use by any person of any *bona fide* description of the character or quality of his goods.

706. Nothing herein contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof. "Passing-off" action.

PART IV.

GENERAL.

CHAPTER I.

INTERNATIONAL AND INTERCOLONIAL ARRANGEMENTS.

707. (1) If Her Majesty is pleased, by Order in Council, to apply the provisions of section 91 of the Patents and Designs Act, 1907, to this Colony, then any person who has applied for protection for any invention, design, or trade mark in the United Kingdom or in any foreign state with which Her Majesty has made arrangements under the said section, or his legal representative or assignee, shall be entitled to a patent for his invention or to registration of his design or trade mark hereunder in priority to other applicants; and the patent or registration shall have the same date as the date of the application in the United Kingdom or such foreign state. International and inter-colonial arrangements.

Provided that :—

(a) The application is made, in the case of a patent within twelve months, and in the case of a design or trade mark within four months from the application for protection in the United Kingdom or in such foreign state; and

(b) Nothing in this article shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the actual date on which his complete specification is accepted, or his design or trade mark is registered, in this Colony.

(2) The patent granted for the invention or the registration of a design or trade mark shall not be invalidated :—

(a) In the case of a patent, by reason only of the publication of a description of, or use of, the invention ; or

(b) In the case of a design, by reason only of the exhibition or use of, or the publication of a description or representation of, the design ; or

(c) In the case of a trade mark, by reason only of the use of the trade mark,

in this Colony during the period specified herein as that within which the application may be made.

(3) The application for the grant of a patent, or the registration of a design, or the registration of a trade mark under this article, must be made in the same manner as an ordinary application under this Title :

Provided that :—

(a) In the case of patents, the application shall be accompanied by a complete specification, which, if it is not accepted within the period of twelve months, shall with the drawings (if any) be open to public inspection at the expiration of that period ; and

(b) in the case of trade marks, any trade mark the registration of which has been duly applied for in the country of origin may be registered under the Third Part of this Title.

(4) The provisions of this article shall apply only in the case of those foreign States with respect to which Her Majesty by Order in Council declares them to be applicable, and so long only in the case of each State as the Order in Council continues in force with respect to that State.

(5) Where it is made to appear to the Governor in Council that the legislature of any British possession has made satisfactory provision for the protection of inventions, designs, and trade marks, patented or registered in this Colony, the Governor in Council may apply the provisions of

this article to that possession, with such variations or additions, if any, as may seem fit.

CHAPTER II.

DEFINITIONS.

708. The Registrar of the Supreme Court, or such other officer as the Governor may appoint, shall be the Registrar of Patents, Designs, and Trade Marks, and the office of the Registrar of the Supreme Court, or such other office as the Governor may prescribe, shall be the Registry of Patents, Design and Trade Marks. Registrar and Office.

709. In this Title, unless the context otherwise requires :— Interpretation.

“Patent” means letters patent for an invention.

“Patentee” means the person for the time being entitled to the benefit of a patent.

“Invention” means any manner of new manufacture the subject of letters patent and grant of privilege within section 6 of the Statute of Monopolies (that is, the Act of the twenty-first year of the reign of King James the First, Chapter Three, intituled “An Act concerning monopolies and dispensations with penal laws and the forfeiture thereof”), and includes an alleged invention.

“Inventor” and “applicant” shall include the legal representative of a deceased inventor or applicant.

“Design” means any design (not being a design for a sculpture or other thing within the protection of the Sculpture Copyright Act, 1814) applicable to any article, 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, chemical, separate or combined.

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

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

“Proprietor of a new or original design” —

(a) Where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed ; and

(b) Where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired ; and

(c) In any other case, means the author of the design, and where the property in, or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person.

A “mark” includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof.

A “trade mark” means a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale.

A “registrable trade mark” means a trade mark which is capable of registration under the Third Part of this Title.

A “registered trade mark” means a trade mark which is actually upon the register.

“Prescribed” means, in relation to proceedings before the Court, prescribed by rules of court ; in

other cases, prescribed by the provisions of this Title or of any rules appended to or made thereunder.

“The Court” means the Supreme Court.

CHAPTER III.

THE REGISTER.

710. There shall be kept at the Registry for the purposes of this Title a book called the Register of Patents, Designs, and Trade Marks. Therein shall be recorded under a distinguishing number and in due order of application, every invention, and the full name of the inventor, and the date of the patent, and every specification shall be marked with the distinguishing number of the invention to which such specification refers.

Register of patents, designs, and trade marks.

In a separate section shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and transmissions of registered designs, and such other matters as may be prescribed.

All registered trade marks with the names and addresses of their proprietors, notifications of assignments and transmissions, disclaimers, conditions, limitations and all matters prescribed in relation to trade marks shall also be entered in a separate section of the register.

The existing register of patents shall be incorporated with and form part of the register.

711. There shall not be entered in the register any notice of any trust expressed, implied, or constructive, nor shall any such notice be receivable by the Registrar.

No trust to be entered.

712. The register shall during the prescribed hours be open to the inspection of the public ; certified copies of any entry in the register shall be given to any person requiring the same on payment of the prescribed fee ; and it shall be kept generally in accordance with the regulations set forth in the Code of Civil Procedure in relation to registers required to be kept by law.

Inspection of and extract from register.

Publication
of annual
list.

713. The Registrar shall cause to be published at the end of every financial year a list of all patents granted and designs and trade marks registered during the preceding year, and any further information that he may deem expedient.

Transmission
of copies to
England.

714. Copies of the specifications of all registered patents 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.

CHAPTER IV.

CORRECTION AND RECTIFICATION OF REGISTER.

Power for
Registrar to
correct
clerical
errors.

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

(a) Correct any clerical error in or in connection with an application for a patent or for registration of a design or trade mark.

(b) Cancel the registration of a design or trade mark either wholly or in respect of any particular goods in connection with which the design or trade mark is registered.

(c) Correct any clerical error in the representation of a design or in the name or address of the proprietor of any patent, design or trade mark, or in any other matter which is entered upon the Register of Patents, Designs, and Trade Marks.

Entry of
assignments
and trans-
missions in
registers.

716. (1) Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, or to the copyright in a registered design, or to a trade mark, the Registrar shall on request and on proof of title to his satisfaction, register him as the proprietor of such patent, design, or trade mark.

(2) Where any person becomes entitled as mortgagee, licensee, or otherwise to any interest in a patent or design, the Registrar shall, on request and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the register.

(3) The person registered as the proprietor of a patent or design shall, subject to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise deal with, the patent or design and to give effectual receipts for any consideration for any such assignment, licence, or dealing: Provided that any equities in respect of the patent or design may be enforced in like manner as in respect of any other personal property.

(4) The person registered as the proprietor of a trade mark may, by leave of the Registrar, add to or alter the same in any way not substantially affecting the identity of such trade mark. If leave be granted, the trade mark so altered shall be advertised in the prescribed manner.

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

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

(3) In case of fraud in the registration or transmission of a registered trade mark, the Registrar may himself apply to the Court under the provisions of this article.

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

717A. (Ad. 5-1957.) On application by any person aggrieved to the Court, or on application by the Registrar to the Court, the Court may make such order as it may think fit for expunging or varying the registration of a trade mark

Rectification
of registers
by Court.

Power to
expunge or
vary regis-
tration for
breach of
condition.

on the ground of any contravention of, or failure to observe, a condition entered on the register in relation thereto.

Registrar to have notice of proceeding for rectification.

718. In any legal proceeding in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court. Unless otherwise directed by the Court, the Registrar in lieu of appearing and being heard may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issues, and within his knowledge as such Registrar, as he shall think fit, and such statement shall be deemed to form part of the evidence in the proceeding.

Costs.

Costs of proceedings before the Court.

719. In all proceedings before the Court under this Title the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

CHAPTER V.

OFFENCES.

Falsification of entries in register.

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

False representations in respect to patents or designs.

721. If any person falsely represents that any article sold by him is a patented article, or falsely describes any design applied to any article sold by him as registered, he shall be liable for every offence, on summary conviction, to a fine not exceeding twenty-four dollars.

If any person sells an article having stamped, engraved, or impressed thereon or otherwise applied thereto the word

“patent,” “patented,” “registered,” or any other word expressing or implying that the article is patented or that the design applied thereto is registered, he shall be deemed for the purposes of this article to represent that the article is a patented article or that the design applied thereto is a registered design.

Any person who, after the copyright in a design has expired, puts or causes to be put on any article to which the design has been applied the word “registered,” or any word or words implying that there is a subsisting copyright in the design, shall be liable on summary conviction to a fine not exceeding twenty-four dollars.

722. If any person, without the authority of Her Majesty, uses in connection with any business, trade, calling, or profession the Royal Arms (or arms so nearly resembling them as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised to use the Royal Arms, he shall be liable on summary conviction to a fine not exceeding ninety-six dollars.

Unauthorised assumption of Royal Arms.

723. (1) Any person who represents a trade mark as registered which is not so, shall be liable for every offence on summary conviction to a fine not exceeding twenty-four dollars.

Penalty on falsely representing a trade mark as registered.

(2) A person shall be deemed, for the purposes of this enactment, to represent that a trade mark is registered, if he uses in connection with the trade mark the word “registered,” or any words expressing or implying that registration has been obtained for the trade mark.

CHAPTER VI.

SUPPLEMENTAL PROVISIONS.

724. In any proceedings hereunder before the Crown Attorney or Registrar, the evidence shall be by affidavit in the absence of directions to the contrary. In case any part of the evidence is taken orally, the Crown Attorney or Registrar shall, in respect of requiring the attendance of witnesses and

Evidence.

taking evidence on oath, be in the same position in all respects as an examiner appointed by the Court.

Extension of time. 725. The Crown Attorney may extend any delay prescribed hereunder on the ground either that the applicant does not reside in the Colony or that it is difficult to obtain expert advice therein.

Patent to bind Crown. 726. A patent shall have to all intents the like effect as against Her Majesty the Queen as it has against a subject:

Provided that any Government department may, by themselves, their agents, contractors, or others, at any time after the application, use the invention for the services of the Crown on such terms as may, either before or after the use thereof, be agreed on, with the approval of the Governor, between the department and the patentee, or, in default of agreement, as may be settled by the Governor after hearing all parties interested.

Saving for prerogative. 727. Nothing herein shall take away, abridge or prejudicially affect the prerogative of the Crown in relation to the granting of any letters patent or to the withholding of a grant thereof.

Fees. 728. (Subst. 27-1939.) The Governor in Council, from time to time, may prescribe fees to be paid in respect of proceedings under this Title, but until such fees are prescribed there shall be paid to the Registrar in respect of the several matters mentioned in the Schedule to this Title the several fees therein specified.

Schedule.

Appeals. 729. Subject to rules of court, an appeal from any order or decision made or given in an action for infringement or other proceeding before the Supreme Court under this Title shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the Supreme Court in cases within its ordinary jurisdiction.

Rules and forms. 730. The Governor in Council may make and prescribe rules and forms for carrying into effect the objects of this

Title; but until such rules and forms are made and prescribed, and so far as the same do not extend, the rules and forms for the time being in force in England shall be used in all cases to which they are applicable; and shall be modified as directed by the Registrar to meet other cases.

APPENDIX.

1. UNITED KINGDOM PATENTS RULES.

Rules made under the authority of the Registration of United Kingdom Patents Ordinance, No. 19 of 1924, now Article 660A of the Commercial Code. R. 1-1925.

1. (a) An application for a certificate of registration shall *mutatis mutandis* be in the form of an application for a patent and it shall be signed by the grantee or person deriving his right from the grantee and by all proper parties required to join in the application and the signature of any such grantee, person or party shall be authenticated to the satisfaction of the Registrar.

(b) The application shall be accompanied by the document or documents (duly authenticated to the satisfaction of the Registrar,) required by article 660A of the Commercial Code or which are otherwise necessary or required to prove the right of the applicant to have the patent registered in the Colony and a certificate of registration issued in respect thereof.

(c) A certificate of registration shall be in the Form A in the Schedule hereto, and shall be sealed with the Public Seal of the Colony.

2. An application for entry on the register under paragraph 9 of article 660A shall in the case of individuals be made and signed by the person applying for such entry, or by his agent duly authorised to the satisfaction of the Registrar, and in the case of a body corporate by the agent, authorised in like manner.

3. Every such application shall state the name, address and description of the applicant, and the particulars of the assignment, transmission, or other operation of law, by virtue of which he applies for such entry, so as to show the manner in which, and the person or persons to whom the privileges and rights conferred by the certificate of registration or any interest therein have been assigned or transmitted.

4. Every assignment and every other document containing, giving effect to, or being evidence of, the transmission of the

privileges and rights conferred by a certificate of registration or interest therein, as claimed by such application, except such documents as are matters of record, shall be produced to the Registrar, together with the application above prescribed, and such other proof of title as he may require for his satisfaction.

As to a document which is a matter of record, an official or certified copy thereof shall in like manner be produced to the Registrar.

5. There shall also be left with the application an attested copy of the assignment or other document above required to be produced.

As to a document which is a matter of record, an official or certified copy shall be left with the application in lieu of an attested copy.

6. An application for entry on the register of an assignment, transmission or other instrument shall be in the Form B in the Schedule hereto.

SCHEDULE.

FORM A.

Form of Certificate of Registration.

THE COMMERCIAL CODE OF SAINT LUCIA, ART. 660A.

I, _____ Registrar of Patents in the Colony of Saint Lucia hereby certify that on the _____ day of _____ 19____, a patent numbered _____, granted in the United Kingdom to _____ sealed as of the _____ day of _____ 19____, the title of which is _____ was registered in the Registry of Patents in the Colony of Saint Lucia under the provisions of the above mentioned article by

of

(L.S.)

Witness my hand this

day of

19____.

FORM B.

Form of Application for Entry on Register of Assignment, Etc.

THE COMMERCIAL CODE OF SAINT LUCIA, ART. 660A.

I, (*here insert in full name, address and description*) claim to be entitled (*here insert the nature of the claim, e.g. as assignee*) to the privileges and rights conferred by a certificate of registration dated the _____ day of _____ 19____, issued to (*here give the name and address of persons to whom certificate was issued*) by virtue of (*here specify the particulars of document, giving its date and the parties to the same, and showing how the claim here made is substantiated.*)

And I hereby apply for the entry on the register of such (*here state the nature of the document.*)

In proof of the above, I transmit the accompanying (*here insert the nature of the document*) with an attested copy thereof.

I am, Sir,

Your Obedient Servant,

To the Registrar of Patents,
Castries,
Saint Lucia.

2. SCHEDULE OF FEES.

(Am. S.R.O. 41-1953 ; 25-1955.)

PART I.

A. Fees Payable on and in connection with Letters Patent.

	\$	¢
1. On application	14	40
2. On appeal from Registrar to Crown Attorney.		
By appellant	14	40
3. On notice of opposition to grant of patent.		
By opponent	2	40

	\$	¢
4. On hearing by Registrar. By applicant and by opponent respectively	2	40
On application to amend specification :--		
5. Up to sealing. By applicant	4	80
6. After sealing. By patentee	9	60
7. On notice of opposition to amendment. By opponent	2	40
8. On hearing by Registrar. By applicant and by opponent respectively	2	40
9. On application to amend specification during action or proceeding. By patentee	4	80
10. Sealing patent	9	60
11. Before the expiration of the 4th year from the date of the patent and in respect of the 5th year	14	40
12. Before the expiration of the 5th year from the date of the patent and in respect of the 6th year	19	20
13. Before the expiration of the 6th year from the date of the patent and in respect of the 7th year	24	00
14. Before the expiration of the 7th year from the date of the patent and in respect of the 8th year	28	80
15. Before the expiration of the 8th year from the date of the patent and in respect of the 9th year	33	60
16. Before the expiration of the 11th year from the date of the patent	57	60
On enlargement of time for payment of renewal fees :—		
17. Not exceeding one month	4	80
18. „ two months	14	40
19. „ three months	24	00
20. For every entry of an assignment, transmission, agreement, licence or extension of patent	2	40
21. For duplicate of letters patent	9	60
22. Search or inspection fee		24
23. For office copies		24

	\$	¢
24. For office copies of drawings, cost according to agreement.		
25. For certifying office copies, MSS., or printed, each		24
26. On request to Registrar to correct a clerical error up to sealing	1	20
after sealing	4	80
27. For altering address in register	1	20
28. For advertisement in <i>Gazette</i>	5	00

B. Fees Payable in respect of United Kingdom Patents.

(R. 1-1925.)

On application for registration	4	80
On request to substitute a copy of specification, or specification and drawings, amending specifica- tion, or specification and drawings, originally filed	4	80
On every entry of an assignment, transmission or other instrument affecting the title to privileges and rights conferred by a certificate of registration of a patent, or to any interest therein	2	40
Search or inspection fee		24
For office copies — Every 100 words (with a minimum fee of 24¢)		12
For office copies of drawings, cost according to agreement.		
For certifying office copies		24

PART II.

A. Fees Payable in respect of Registration of Designs.

	\$	¢
1. On application	14	40
2. On hearing by Registrar (each party)	2	40
3. Certificate	7	20
4. For every entry	2	40
5. Clerical correction	1	20
6. Office copies (for every 100 words)		24
7. Advertisements (each insertion)	5	00

B. Fees Payable in respect of United Kingdom Designs.

(Ad. R. 2-1931.)

1. For registration of a design, in respect of each class (including filing of all necessary documents and the issue of a Certificate of Registration)	1	20
2. For registration of an assignment of a design, in respect of each class (including the filing of all necessary documents and the indorsation on the Certificate of Registration)	1	20
3. For filing notification of extension of period of copyright including indorsation on the Certificate of Registration—		
For 1st extension	1	20
For 2nd „	2	40
4. On any application under article 715 of the Commercial Code		24
5. Certified copies or extractions of any documents filed (for every 100 words)		12
6. On action taken not otherwise charged		24

PART III.

Fees Payable in respect of Registration of Trade Marks.

	\$	¢
1. On application	4	80
2. On appeal	4	80
3. On notice of opposition — By opponent	2	40
4. On hearing by Registrar (each party)	2	40
5. On hearing by Crown Attorney (each party)	4	80
6. For Certificate	4	80
7. On transmission	2	40
8. Clerical correction not involving alteration of mark or class	1	20
9. Clerical correction involving alteration of mark or class	2	40
10. Certified copy	2	40
11. Office copy (for every 100 words)		24
12. Any entry not specified	1	20
13. Inspecting register for particular mark (for every 15 minutes)		24
14. Inspecting register generally (for every 15 minutes)		60
15. Advertisements (each insertion)	5	00

FINAL PROVISION.

731. (23-1916, s. 12.) Except as otherwise expressly provided by this Code or by any other law in matters commercial and maritime, the law for the time being and from time to time in force in England shall continue as heretofore to be the law of the Colony.