

[CAP. 400

REPUBLIC OF ZAMBIA

THE PATENTS ACT

CHAPTER 400 OF THE LAWS OF ZAMBIA

CHAPTER 400

THE PATENTS ACT

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title
2. Interpretation

PART II

ADMINISTRATION

3. Establishment of Patent Office
4. Appointment of officers
5. Seal.
6. Register of patents

PART III

INTERNATIONAL PROVISIONS

7. Convention arrangements
8. Convention applications
9. Special provisions as to vessels, aircraft and land vehicles
10. Protection of inventions communicated under international agreements
- 10A. ARIPO Patents

PART IV

APPLICATIONS GENERALLY

11. Persons entitled to make application
12. Form of application
13. Complete and provisional specifications
14. Contents of specification
15. Effective date of claims of complete specification
16. Examination of applications and specifications
17. Ante-dating and post-dating of applications

Section

18. Refusal of application in certain cases
19. Powers of Registrar if specification or application defective
20. Lapsing of applications
21. Acceptance and publication of complete specification
22. Opposition to grant of patent
23. Substitution of applicants
24. Provisions for secrecy of certain inventions

PART V

GRANT, EFFECT AND TERM OF PATENT

25. Grant and sealing of patent
26. Amendment of patent granted to deceased applicant
27. Date of patent
28. Extent, effect and form of patent
29. Term of patent
30. Extension of patent
31. Patents of addition
32. Renewal of patents
33. Restoration of lapsed patents
34. Protective provisions to be inserted in order for restoration of patent
35. Endorsement of patent "licences of right"
36. Cancellation of endorsement made under section 35
37. Compulsory licence in case of abuse or insufficient use of patent rights
38. Inventions relating to food or certain other commodities
39. Supplementary provisions as to licences
40. Use of patented inventions for services of the State
41. Special provisions as to State use during emergency
42. Reference of disputes as to State use

PART VI

SPECIAL PROVISIONS RELATING TO SPECIFICATIONS,
ANTICIPATION AND RIGHTS IN INVENTIONS

43. Amendment of specification by Registrar
44. Amendment of specification with leave of High Court

Section

45. Restrictions on recovery of damages in certain cases
46. Savings for anticipation
47. Co-ownership of patents
48. Disputes as to inventions made by employees
49. Avoidance of certain restrictive conditions in contracts
50. Revocation of patents
51. Consequences of revocation on grounds of fraud
52. Surrender of patents

PART VII

INFRINGEMENTS

53. Procedure and conditions in action for infringement
54. Relief for infringement of partially valid specification
55. Restrictions on recovery of damages for infringement
56. Remedy for groundless threats of infringement proceedings
57. Power of Court to make declaration as to non-infringement.
- 57A. Definition of Court

PART VIII

ASSIGNMENTS AND CORRECTIONS

58. Provisions as to assignments
59. Power of Registrar to authorise corrections
60. Rectification of register

PART IX

FUNCTIONS OF REGISTRAR IN RELATION TO CERTAIN EVIDENCE,
DOCUMENTS AND POWERS

61. Evidence of certain entries and documents
62. Requests for information as to patent or patent application
63. Loss or destruction of patent
64. Exercise of discretionary powers of Registrar
65. Proceedings before Registrar
66. Advertisements to be approved by Registrar

PART X

PATENT AGENTS

Section

67. Patent agents and their functions
68. Qualification and registration of patent agents
69. Removal of names from register of patent agents
70. Privileges of legal practitioners
71. Entitlement to practise as patent agent
72. Prohibition of certain acts by patent agents

PART XI

APPEALS

73. Appeals from Registrar
74. *Repealed by Act No. 18 of 1980*
75. *Repealed by Act No. 18 of 1980*
76. *Repealed by Act No. 18 of 1980*
77. *Repealed by Act No. 18 of 1980*
78. Appeals to Supreme Court
79. *Repealed by Act No. 18 of 1980*
80. Time for appeals
81. Rules of court
82. References to High Court by Registrar

PART XII

OFFENCES AND PENALTIES

83. Falsification of certain documents
84. Deceiving or influencing the Registrar or an officer
85. Witness giving false evidence
86. Prohibition on trafficking in patents by officers in Patent Office
87. Unauthorised claim of patent right
88. Unauthorised use of certain words
89. Penalties

PART XIII

MISCELLANEOUS

Section

- 90. Lodging and authentication of documents
- 91. Oaths and affirmations
- 92. Expenses of administration
- 93. Provisions as to fees
- 94. Saving for certain forfeitures
- 95. Patent Journal
- 96. Regulations

PART XIV

APPLICATION AND TRANSITIONAL PROVISIONS

- 97. Application of Act

CHAPTER 400

PATENTS

An Act to make provision relating to patents for inventions and for other purposes incidental thereto.

[1st April, 1958]

Federal Acts
 13 of 1957
 12 of 1959
 36 of 1960
 1 of 1962
Act No. 26
of 1987
Act No. 18
of 1980
Act No. 13
of 1994
Government
Notices
 185 of 1964
 497 of 1964
Statutory
Instrument
 175 of 1965

PART I

PRELIMINARY

1. This Act may be cited as the Patents Act.

Short title

2. (1) In this Act, unless the context otherwise requires—

Interpretation

“applicant” includes a person in whose favour a direction has been given under section *twenty-three*, or his legal representative;

“article” includes any substance or material, and any equipment, machinery or apparatus, whether affixed to land or not;

“assignee” means—

(a) the person who has derived his title to the invention for Zambia directly or indirectly from the inventor thereof or from the latter’s assignee; or

(b) the legal representative of such person;

“Convention” means the Union Convention of Paris, dated the 20th March, 1883, for the Protection of Industrial Property, revised at Brussels on the 14th December, 1900, at Washington on the 2nd June, 1911, at The Hague on the 6th November, 1925, and at London on the 2nd June, 1934, and any revision thereof to which the *former Federation of Rhodesia and Nyasaland or the former Protectorate of Northern Rhodesia may have acceded or to which the **Republic may accede in terms of section *seven*;

“convention application” means an application made by a person referred to in paragraph (c) of section *eleven*;

“convention country”, in relation to any provision of this Act, means a country (including any colony, protectorate or territory subject to the authority or under the suzerainty of that country, or any territory over which a mandate or trusteeship is exercised) which the Minister has, with a view to the fulfilment of the provisions of the Convention, by statutory notice, declared to be a convention country;

* Acceded with effect from 1st April, 1958. (F.G.N. No. 39 of 1958.)

** Acceded with effect from 24th October, 1964. (G.N. No. 1751 of 1965.)

“date of lodging”, in relation to any document lodged under this Act, means the date on which the document is lodged or, where it is deemed by virtue of any provision of this Act to have been lodged on any different date, the date on which it is deemed to have been lodged;

“effective date” means, in relation to—

- (a) an application which has been ante-dated or post-dated under this Act, the date to which that application has been so ante-dated or post-dated;
- (b) an application in a convention country, the date on which the application in respect of the relevant invention was made in the convention country in question or is in terms of the laws of that country deemed to have been so made;
- (c) any other application, the date on which that application was lodged at the Patent Office;

“examiner” means an examiner appointed under section *four*;

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

“invention” means any new and useful art (whether producing a physical effect or not), process, machine, manufacture or composition of matter which is not obvious, or any new and useful improvement thereof which is not obvious, capable of being used or applied in trade or industry and includes an alleged invention;

“inventor” means the person who actually devised the invention and includes the legal representative of an inventor, but does not include a person to whom an invention has been communicated either from within or outside Zambia;

“legal practitioner” means a person admitted or otherwise entitled to practise as a barrister and solicitor in terms of the Legal Practitioners Act;

“legal representative” means—

- (a) the liquidator or receiver of a company;
- (b) the representative recognised by law of any person who has died, become bankrupt, assigned his estate, is an infant or a minor, or of unsound mind, or is otherwise under a disability;

“new”, in relation to an invention, means, subject to the provisions of sections *eight*, *ten* and *forty-six*, that, on or before the effective date of application for a patent in respect thereof, the invention was not—

- (a) known or used anywhere in the former Federation of Rhodesia and Nyasaland or, after the 1st January, 1964, in the former Protectorate of Northern Rhodesia or, after the 24th October, 1964, in the Republic (hereinafter in this definition referred to as "the said territories") by anyone other than the applicant or his agent, or the person or persons from or through whom such applicant has derived his right or title (secret knowledge or secret user otherwise than on a commercial scale being excluded);
- (b) worked anywhere in the said territories otherwise than by way of reasonable technical trial or experiment by the applicant or any person or persons from or through whom such applicant has derived his right or title;
- (c) described in a patent specification available to public inspection in accordance with the Patents (Southern Rhodesia) Act, Chapter 208 of the 1948 Edition of the Laws, the Registration of United Kingdom Patents Act, Chapter 205 of the 1957 Edition of the Laws (hereinafter in this section referred to as "such legislation") or this Act and bearing a date less than fifty years prior to such effective date;
- (d) described in writing in any publication of which there was a copy anywhere in the said territories at the effective date of the application, or in a publication printed and published outside the said territories less than fifty years prior to such date;
- (e) claimed in any complete specification for a patent which was lodged in accordance with such legislation or this Act and which, though not available to public inspection at the effective date of the application, was deposited pursuant to an application for a patent which is, or will be, of prior date to the date of any patent which may be granted in respect of the said invention;

"patent" means letters patent for an invention granted for Zambia under section *twenty-five*;

"patent agent" means a person who is registered as such in terms of subsection (1) of section *sixty-eight*;

"patent of addition" means a patent granted under section *thirty-one*;

"Patent Office" means the Patent Office established under section *three*;

"patented article" means any article in respect of which a patent has been granted and is for the time being in force;

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

“published” means made available to the public and, without prejudice to the generality of the foregoing provision, a document shall be deemed, for the purposes of this Act, to be published if it can be inspected as of right by members of the public, whether upon payment of a fee or otherwise;

“register” means the register of patents kept at the Patent Office under section *six*;

“register of patent agents” means the register of patent agents kept under subsection (1) of section *sixty-eight*;

“Registrar” means the Registrar of Patents appointed under section *four*;

“specification” means a provisional or a complete specification, as the circumstances may require, referred to in section *fourteen*;

(2) A reference in this Act to the date of a patent shall be construed as a reference to the appropriate date specified in subsection (1) of section *twenty-seven*.

(As amended by No. 12 of 1959, G.N. No. 185 of 1964, S.I. No. 175 of 1965 and Act No. 18 of 1980)

PART II

ADMINISTRATION

Establishment
of Patent
Office

3. There shall be established under the direction of the Minister an office to be called the Patent Office.

Appointment
of officers

4. There shall be—

- (a) a Registrar of Patents who shall exercise the powers and perform the duties assigned to the Registrar by this Act and shall be responsible for its administration;
- (b) one or more Deputy Registrars of Patents who shall, subject to the control of the Registrar, have all the powers conferred by this Act upon the Registrar;
- (c) such examiners and other officers as may be necessary for carrying out the provisions of this Act.

Seal

5. There shall be a seal of the Patent Office, and impressions thereof shall be judicially noticed.

Register of
patents

6. (1) There shall be kept at the Patent Office a register of patents, in which shall be entered—

- (a) particulars of patents in force, of assignments and transmissions of patents and of licences under patents; and
- (b) notice of all matters which are required by or under this Act to be entered in the register and of such other matters affecting the validity or proprietorship of patents as the Registrar thinks fit.

(2) All registers of patents established and kept under the Patents (Southern Rhodesia) Act, Chapter 208 of the 1948 Edition of the Laws, or the Registration of United Kingdom Patents Act, Chapter 205 of the 1957 Edition of the Laws (hereinafter in this section referred to as "such legislation") shall, under arrangements made by the Registrar with the approval of the Minister, be incorporated with and form part of the register established under subsection (1), so, however, that such arrangements shall in no way be deemed to extend the term and effect of any patent registered in such registers beyond the term and effect provided in respect of such patent by such legislation under which it was granted.

(3) Subject to the provisions of this Act, the register of patents shall, at all convenient times, be open to inspection by the public, and certified copies, sealed with the seal of the Patent Office, of any entry in the register shall be given to any person requiring them on payment of the prescribed fee.

(4) The register of patents shall be *prima facie* evidence of any matters required or authorised by or under this Act to be entered therein.

(5) No notice of any trust, whether expressed, implied or constructive, shall be entered in the register, and the Registrar shall not be affected by any such notice.

PART III

INTERNATIONAL PROVISIONS

7. If the Republic accedes to the Convention and any revision thereof as a country of the Union for the Protection of Industrial Property constituted thereunder, the *Minister shall, by Gazette notice, declare that Zambia has become such a country with effect from the date stated in such notice.

Convention
arrangements

(As amended by G.N. No. 185 of 1964
and S.I. No. 175 of 1965)

* Republic of Zambia declared to be a country of the Union with effect from 24th October, 1964, by G.N. No. 1751 of 1965.

Convention
applications

8. (1) Subject to the provisions of section *eleven*, any person who qualifies under Article 2 or 3 of the Convention and who has applied for protection for an invention in a convention country or his legal representative or assignee (if such assignee is also so qualified) shall be entitled to a patent for his invention under this Act in priority to other applicants if application therefor is made in terms of this Act within twelve months after the effective date of the first application for protection in the first convention country in which he made such application or, where more than one such application for protection has been made, from the effective date of the first such application, and the patent shall have the same date as the effective date of the application in such convention country but the term of the patent shall run from the date on which the complete specification is lodged at the Patent Office:

Provided that—

- (i) nothing in this subsection shall entitle the patentee to recover damages for infringements occurring prior to the date on which his complete specification is advertised as having been accepted in Zambia;
- (ii) no patent granted on a convention application lodged within twelve months after the date stated in terms of section *seven* shall bear a date or be effective from a date prior to the date so stated.

(2) Where, after the lodging of the first application in the first convention country in respect of any invention, a subsequent application is lodged in that country in respect of the same invention, such subsequent application shall be regarded as the first application in that country in respect of that invention, if at the time of the lodging thereof—

- (a) the previous application has been withdrawn, abandoned or refused without having been open to public inspection; and
- (b) no priority rights have been claimed by virtue of such previous application; and
- (c) no rights are outstanding in that convention country in connection with such previous application.

(3) An application which has been withdrawn, abandoned or refused shall not, after the lodging of the subsequent application, be capable of supporting a claim for priority rights under this section.

(4) Where all the rights of each of two or more applicants referred to in subsection (1) who have made application for protection of inventions in any one or more convention countries have become vested in the same person, those applications shall for the purposes of subsection (4) of section *thirteen* be deemed to have been made by the same applicant.

(5) Where an applicant referred to in subsection (1) has applied for protection for any invention by an application which, in accordance with the law of any convention country, is equivalent to an application duly made in that convention country, he shall be deemed for the purposes of this section to have applied in that convention country.

(6) In determining for the purposes of this Act whether an invention described or claimed in a specification lodged in the Patent Office is the same as that for which protection has been applied for in a convention country, regard shall be had to the disclosure contained in the whole of the documents put forward at the same time as and in support of the application in the convention country, being documents of which copies have been lodged at the Patent Office within such time and in such manner as may be prescribed.

(7) A patent granted in Zambia for an invention upon an application made in terms of this section shall not be invalidated by reason only of—

- (a) the invention having been known or used or published in Zambia or elsewhere on or after the effective date of the application in the convention country in which application was first made; or
- (b) the granting in Zambia after the effective date of the application in the convention country of a patent of another person for the same invention:

Provided that—

- (i) the effective date of the patent of such other person shall not be prior to the effective date in Zambia of the convention application; and
- (ii) the convention patentee shall be entitled to have the patent of such other person revoked upon due application under and in compliance with the provisions of section *fifty*.

(8) An application for a patent under this section shall be made in the same manner as for an application in terms of section *twelve*, save that the application shall be accompanied by a complete specification.

(9) For the purposes of this Act, matter shall be deemed to have been disclosed in an application for protection in a convention country if it was claimed or disclosed (otherwise than by way of disclaimer or acknowledgment of prior art) in that application or in documents submitted by the applicant for protection in support of and at the same time as that application, but no account shall be taken of any disclosure by any such document unless a copy of the document is lodged at the Patent Office with the convention appli-

cation or within such period as may be prescribed after the lodging of that application.

(As amended by No. 36 of 1960
and G.N. No. 185 of 1964)

Special provisions as to vessels, aircraft and land vehicles

9. (1) Where a vessel or aircraft registered in a convention country or a land vehicle owned by a person ordinarily resident in such a country comes into Zambia temporarily or accidentally only, the rights conferred by a patent for an invention shall not be deemed to be infringed by the use of the invention—

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

as the case may be.

(2) This section shall not affect the provisions of section *sixteen* of the Aviation Act (which exempts certain aircraft from seizure on patent claims).

Cap. 444

(As amended by G.N. No. 185 of 1964)

Protection of inventions communicated under international agreements

10. (1) Subject to the provisions of this section, the Minister may, by statutory instrument, make regulations for securing that, where an invention has been communicated in accordance with any agreement or arrangement made by or on behalf of the Government with the government of any country for the supply or mutual exchange of information or articles—

- (a) an application for a patent for an invention so communicated made by a person, his legal representative or assignee, entitled under section *eleven* to make such application, shall not be prejudiced, and a patent granted on such an application shall not be invalidated by reason only that the invention has been communicated as aforesaid or that in consequence thereof—
 - (i) the invention has been published, made, used, exercised or vended; or
 - (ii) an application for a patent has been made by any other person, or a patent has been granted on such an application;
- (b) any application for a patent made in consequence of such a communication as aforesaid by a person who is not entitled so to do under section *eleven* may be refused and any patent granted on such an application may be revoked.

(2) Regulations made under subsection (1) may provide that the publication, making, use, exercise or vending of an invention or the

making of any application for a patent in respect thereof shall, in such circumstances and subject to such conditions or exceptions as may be prescribed by the regulations, be presumed to have been in consequence of such a communication as is mentioned in that subsection.

(3) The powers of the Minister under this section, so far as they are exercisable for the benefit of persons from whom inventions have been communicated to the Government by the government of any country, shall only be exercised if and to the extent that the Minister is satisfied that substantially equivalent provision has been or will be made under the law of that country for the benefit of persons whose inventions have been communicated by the Government to the government of that country.

(4) References in subsection (3) to the communication of an invention to or by the Government or the government of any country shall be construed as including references to the communication of the invention by or to any person authorised in that behalf by the government in question.

(As amended by G.N. No. 185 of 1964)

10A. (1) In this section—

- (a) "ARIPO" means the African Regional Industrial Property Organisation, formerly known as the Industrial Property Organisation for English-Speaking Africa (ESARIPO), which was established, under the former name, by an agreement adopted at Lusaka on 9th December, 1976; and
- (b) "ARIPO Protocol" means the Protocol on Patents and Industrial Designs within the Framework of ARIPO, adopted at Harare on 10th December, 1982.

ARIPO
Industrial
patents

(2) Where a patent has been granted by ARIPO under section 3 (7) of the ARIPO Protocol and the Registrar has not objected, under section 3 (6) of the Protocol, to the patent having effect in Zambia, the patent shall for all purposes be deemed to have been granted under this Act.

(3) A patent shall not be deemed to have been granted under this section if, under section 3 (6) of the ARIPO Protocol, the Registrar objects to its having effect in Zambia.

(As amended by Act No. 26 of 1987)

PART IV

APPLICATIONS GENERALLY

11. Application for a patent for an invention may be made by any of the following persons, that is to say:

Persons entitled to make application

- (a) a person claiming to be the inventor of the invention who owns the invention in respect of Zambia;
- (b) an assignee;
- (c) a person entitled under subsection (1) of section *eight*;
- (d) the legal representative of any person who immediately before his death or disability was entitled to make such application;

and may be made by any above-mentioned person either alone or jointly with any other person.

(As amended by G.N. No. 185 of 1964)

Form of
application

12. (1) Every application for a patent shall—

- (a) be made in the prescribed form, which must be signed by the applicant or by a person authorised to sign on his behalf;
- (b) be lodged at the Patent Office in the prescribed manner;
- (c) state an address for service in Zambia to which all notices and communications may be sent; and
- (d) in so far as they are not already stated for the purposes of paragraph (c), state the full postal, residential and business addresses of the applicant.

(2) An assignee or legal representative making or joining in an application shall furnish such proof of title or authority as the Registrar may require or as may be prescribed.

(3) Every application form shall—

- (a) state that the applicant owns the invention in respect of Zambia;
- (b) give the full name of the inventor; and
- (c) where the inventor is not the applicant or one of the applicants, contain a declaration that the applicant believes him to be the inventor.

(4) Every convention application, in addition to the requirements set out in subsection (3), shall state—

- (a) the convention country in which such application for protection was made;
- (b) its number;
- (c) the effective date of such application; and
- (d) the respect in which the applicant in the convention country and in Zambia qualifies under Article 2 or 3 of the Convention.

(As amended by G.N. No. 185 of 1964)

Complete and
provisional
specifications

13. (1) Every application for a patent, other than a convention application, shall be accompanied by either a complete specification or a provisional specification and every convention application shall be accompanied by a complete specification.

(2) If a complete specification does not accompany an application, it shall be lodged within twelve months after the date of lodging of the application or within such further period, not exceeding three months, as the Registrar may in writing allow upon payment of the prescribed fee, and if the provisions of this subsection are not complied with the application shall lapse.

(3) Where two or more applications accompanied by provisional specifications have been lodged in respect of inventions which are cognate or of which one is a modification of another, a single complete specification may, subject to the provisions of this section and section *fourteen*, be lodged in pursuance of those applications, or, if more than one complete specification has been lodged, may with the leave of the Registrar be proceeded with in respect of those applications.

(4) Where applications for protection have been made in one or more convention countries in respect of two or more inventions which are cognate or of which one is a modification of another, a single convention application may, subject to the provisions of sections *eleven* and *fourteen*, be made in respect of those inventions at any time within twelve months from the effective date of the earliest of the said applications for protection.

(5) In considering the validity of applications made in terms of subsection (3) or (4) and in determining other relevant matters under this Act, the Registrar shall have regard to the effective dates of the applications or the convention applications concerned relating to the several matters claimed in the specification, and the requirements of subsection (4) of section *twelve* shall, in the case of any such application, apply separately to the applications for protection in respect of each of the said inventions.

(6) Where an application for a patent, not being a convention application, 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 Act as a provisional specification and proceed with the application accordingly.

(7) Where a complete specification has been lodged in pursuance of an application for a patent accompanied by a provisional specification or by a specification treated by virtue of a direction under subsection (6) 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 lodging of the complete specification.

Contents of
specification

14. (1) Every specification shall indicate whether it is a provisional or a complete specification and shall commence with a title sufficiently indicating the subject to which the relevant invention relates.

(2) A provisional specification shall fairly describe the invention.

(3) A complete specification shall—

- (a) fully describe the invention and the manner in which it is to be performed;
- (b) disclose the best method of performing the invention known to the applicant at the time when the specification is lodged at the Patent Office; and
- (c) end with a claim or claims defining the subject-matter for which protection is 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) Every specification shall be accompanied by drawings if required by the Registrar, and such drawings shall be deemed to be part of the specification, but if drawings which accompanied a provisional specification are sufficient for the purpose of a complete specification, it shall suffice if that complete specification refers to such drawings.

(6) Subject to the foregoing provisions of this section, a complete specification lodged at the Patent Office after a provisional specification, or with a convention application, may include claims in respect of developments of or additions to the invention which was described in the provisional specification or, as the case may be, in respect of which application for protection was made in a convention country, being developments of or additions in respect of which the applicant would be entitled to make a separate application for a patent:

Provided that an application shall, in so far as the complete specification contains claims in respect of any such developments or additions, be deemed to have been made on the date on which the complete specification was lodged at the Patent Office.

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

Effective date
of claims of
complete
specification

15. (1) Every claim of a complete specification shall have effect from the date prescribed by this section in relation to that claim 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 effective 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 effective date.

(2) Where the complete specification is lodged in pursuance of a single application preceded by a provisional specification or by a specification which is treated by virtue of a direction under subsection (6) of section *thirteen* as a provisional specification, and the claim is fairly based on the matter disclosed in that specification, the effective date of that claim shall be the effective date of the application.

(3) Where the complete specification is lodged or proceeded with in pursuance of two or more applications accompanied by such specifications as are mentioned in subsection (2), and the claim is fairly based on the matter disclosed in one of those specifications, the effective date of that claim shall be the effective date of the application accompanied by that specification.

(4) Where the complete specification is lodged in pursuance of a convention application and the claim is fairly based on the matter disclosed in the application for protection in a convention country or, where the convention application is founded upon more than one such application for protection, in one of those applications, the effective date of that claim shall be the effective date of the relevant application for protection.

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

(6) In any case to which subsection (2), (3), (4) or (5) does not apply, the effective date of a claim shall be the date of lodging of the complete specification in Zambia.

(As amended by G.N. No. 185 of 1964)

16. (1) The Registrar shall examine every application for a patent and every specification accompanying such application or lodged at the Patent Office in pursuance of such application, in order to ascertain—

Examination
of applications
and specifica-
tions

- (a) whether such application or specification complies with the requirements of this Act;
- (b) in the case of a complete specification lodged after a provisional specification, or of a convention application, whether the invention claimed is substantially the same as that disclosed in the provisional specification or in the application lodged in the convention country, as the case may be.

(2) Any examination or investigation required in terms of subsection (1) may, on the direction of the Registrar, be undertaken by an examiner who shall report his findings on any such examination or investigation to the Registrar.

(3) An examination or investigation required by the provisions of this Act shall not be deemed to warrant the validity of any patent, and no liability shall be incurred by the Government, the Minister, the Registrar or any officer of the Patent Office by reason of or in connection with any such examination or investigation or report or other proceeding consequent thereon.

(As amended by G.N. No. 185 of 1964)

Ante-dating
and post-
dating of
applications

17. (1) At any time after an application has been lodged under this Act and before acceptance of the complete specification, 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—

- (i) no application shall be post-dated under this subsection to a date later than six months from the date on which it was actually lodged or would, but for this subsection, be deemed to have been so lodged; and
- (ii) a convention application shall not be post-dated under this subsection to a date later than the last date on which, under the provisions of this Act, the application could have been made.

(2) Where an application or specification lodged under this Act 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 again lodged under this Act.

(3) Where, at any time after an application or specification has been lodged at the Patent Office and before acceptance of the complete specification, a fresh application or specification is lodged 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 antedated to a date not earlier than the date of lodging of the first-mentioned application or specification.

(4) An appeal shall lie from any decision of the Registrar under subsection (2) or (3).

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

Refusal of application in certain cases

- (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 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 from any decision of the Registrar under this section.

19. (1) If, in the case of a complete specification lodged in pursuance of an application for a patent, which application was accompanied by a provisional specification, the result of any examination or investigation made in terms of section *sixteen* is adverse to the applicant in regard to any matter referred to in that section, or it is found that the invention described in the complete specification is not substantially the same as that described in the provisional specification or that the complete specification includes an invention not included in the provisional specification, the Registrar may, subject to the provisions of subsection (6) of section *fourteen*—

Powers of Registrar if specification or application defective

- (a) refuse to accept the complete specification until it has been amended to his satisfaction;
- (b) with the consent of the applicant, cancel the provisional specification and direct that the application be post-dated to the date upon which the complete specification was lodged at the Patent Office; or
- (c) where the complete specification includes an invention not included in the provisional specification, allow the application to be proceeded with in so far as the invention included both in the provisional and in the complete specification is concerned and allow an application for the additional invention included in the complete specification to be made and authorise the application for such additional invention.

if lodged at the Patent Office within such period as he may determine, to be dated with the date on which the complete specification was lodged at the Patent Office.

(2) If the case of a convention application it is found that the invention claimed is not substantially the same as that claimed in the application made in the convention country in question, the Registrar may, subject to the provisions of subsection (6) of section *fourteen*—

- (a) refuse to accept the application until it has been amended to his satisfaction; or
- (b) with the consent of the applicant, treat the application as an application in terms of section *twelve*.

(3) If in the case of a convention application it is found that the specification lodged in Zambia includes an invention not included in the specification lodged in the convention country, the Registrar may allow the application to be proceeded with in so far as the invention included in both the convention and the Zambian specification is concerned, and allow an application for the additional invention to be made and authorise such application, if lodged at the Patent Office within the period he may determine, to be dated with the date on which the Zambian specification was lodged at the Patent Office.

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

(As amended by G.N. No. 185 of 1964)

Lapsing of
applications

20. (1) If a complete specification is not accepted within thirty months from the date of lodging of an application, the application shall lapse unless—

- (a) an appeal has been lodged in respect of the application;
- (b) the time within which such appeal may be lodged has not expired; or
- (c) the delay in accepting the specification was not due to any neglect or default on the part of the applicant:

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) If, at the expiration of the period allowed under the provisions of subsection (1), an appeal to the High Court is pending under any of the provisions of this Act in respect of the application (or, in the case of an application for a patent of addition, either in respect of that application or in respect of the application for the patent for the main invention) or the time within which such an appeal could be brought

in accordance with the provisions of Part XI, apart from any future extension of time thereunder, has expired, then—

- (a) where such an appeal is pending, or is brought within the time aforesaid or before the expiration of any extension of that time granted, in the case of the first extension, on an application made within that time or, in the case of a subsequent extension on an application made before the expiration of the last previous extension, the said period shall be extended until such date as the High Court determine:
- (b) where no such appeal is pending or is so brought, the said period shall continue until the end of the time aforesaid, or, if any extension of that time is granted as aforesaid, until the expiration of the extension or the last extension so granted.

*(As amended by No. 12 of 1959, S.I. No. 175 of 1965
and Act No. 18 of 1980)*

21. (1) Subject to the provisions of section *twenty*, the complete specification may be accepted by the Registrar at any time after the applicant has complied with the requirements imposed upon him by this Act:

Acceptance and publication of complete specification

Provided that the applicant may give notice to the Registrar requesting him to postpone acceptance until such date, not being later than eighteen months from the date of lodging of the application, as may be specified in the notice and the Registrar may postpone acceptance accordingly.

(2) On the acceptance of a complete specification, the Registrar shall give notice to the applicant who shall, within the prescribed period or within such further period as the Registrar may allow, advertise in the prescribed manner the fact that the specification has been accepted and, unless the acceptance of the specification is so advertised, the application shall lapse.

(3) Upon advertisement under the provisions of subsection (2), the application form, the specification and other documents essential to obtain acceptance lodged in pursuance thereof shall be open to public inspection.

(4) After the date of the publication as prescribed in subsection (2) of notice of acceptance of a complete specification and until the sealing of a patent in respect thereof, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the publication of such notice.

22. (1) Any person interested, including the State, may, within three months from the date of the advertisement of the acceptance of a complete specification or within such further period as the Registrar, on application made to him within the said period of three

Opposition to grant of patent

months, may allow, or, with the consent of the applicant, at any time before the sealing of the patent, oppose the grant of a patent in accordance with the provisions of this section by giving written notice to the Registrar of opposition to such grant on any of the following grounds and no others, namely:

- (a) that the applicant is not a person entitled under section *eleven* to make the application;
- (b) that the application is in fraud of the rights of the person giving such notice or of any persons under or through whom he claims;
- (c) that the invention does not relate to an art (whether producing a physical effect or not), process, machine, manufacture or composition of matter, which is capable of being applied in trade or industry;
- (d) subject to the provisions of section *thirty-one*, that the invention is obvious in that it involves no inventive step having regard to what was common knowledge in the art at the effective date of the application;
- (e) that the invention is not useful;
- (f) that the complete specification does not fully describe and ascertain the invention and the manner in which it is to be performed;
- (g) that the claims of the complete specification do not sufficiently and clearly define the subject-matter for which protection is claimed;
- (h) that the complete specification does not disclose the best method of performing the invention known to the applicant at the time when the specification was lodged at the Patent Office;
- (i) that the application contains a material misrepresentation;
- (j) that the invention described or claimed in the complete specification is not the same as that described in the provisional specification, and—
 - (i) in so far as it is not described in the provisional specification, was not new at the date when the complete specification was lodged at the Patent Office; or
 - (ii) forms the subject of a pending application made in Zambia for a patent the effective date of which is prior to the date on which the complete specification was lodged at the Patent Office;
- (k) in the case of a convention application, that the specification describes or claims an invention other than that for which protection has been applied for in the convention country and that such other invention either—

- (i) forms the subject of an application for a patent in Zambia which, if granted, would bear a date in the interval between the lodging of the application in the convention country and the effective date of the application in Zambia; or

(ii) is not an invention as defined in this Act:

- (l) that the invention was not new at the effective date of the application;
- (m) that the specification includes claims which, in terms of subsection (1) of section *eighteen*, should have been refused.

(2) A copy of any notice given under subsection (1), and of any statement which in terms of subsection (3) accompanies such notice, shall be served by the objector on the applicant for the patent.

(3) Any notice of opposition given under subsection (1) shall state the grounds on which the objector intends to oppose the grant of the patent, and shall be accompanied by a statement setting out particulars of the facts alleged in support of the said grounds, and proof of service on the applicant concerned of a copy of such notice and of such statement shall be furnished to the Registrar.

(4) If the applicant wishes to contest the opposition, he shall, within such time as is prescribed, or such further time as the Registrar may allow, lodge at the Patent Office a counter-statement setting out particulars of the grounds upon which the opposition is to be contested.

(5) A copy of any such counter-statement lodged at the Patent Office shall be served by the applicant on the objector concerned.

(6) Particulars delivered may from time to time be amended by leave of the Registrar.

(7) No evidence shall be admitted in proof of any ground on which particulars have not been delivered as aforesaid, except by leave of the High Court.

(8) When, in relation to any opposition, the foregoing provisions of this section have been complied with to the extent therein required, the Registrar shall hand all relevant papers to the registrar of the High Court who shall arrange for the matter to be heard by that Court in the manner prescribed and the Patents Tribunal may make such order therein as it deems just

(9) Upon being notified of the order of the High Court by the registrar thereof, the Registrar shall take such further action therein as may be necessary.

(As amended by G.N. No. 185 of 1964, S.I. No. 175 of 1965 and Act No 18 of 1980)

Substitution of applicants

23. (1) If the Registrar is satisfied, on a claim made in the prescribed manner at any time before a patent has been granted, that by virtue of any assignment or agreement made by the applicant or one of the applicants for a patent, or by operation of law, the claimant would, if the patent were then granted, be entitled thereto or to the interest of an applicant therein, or to an undivided share of the patent or of that interest, the Registrar may, subject to the provisions of this section, direct that the application shall proceed in the name of the claimant or in the names of the claimant and the applicant or the other joint applicant or applicants, as the case may require.

(2) No such direction as aforesaid shall be given by virtue of any assignment or agreement made by one of two or more joint applicants for a patent except with the consent of the other joint applicant or applicants.

(3) No such direction as aforesaid shall be given by virtue of any assignment or agreement for the assignment of the right to an invention unless—

- (a) the invention is identified thereinby reference to the number of the application for the patent;
- (b) there is produced to the Registrar an acknowledgement by the person by whom the assignment or agreement was made that the assignment or agreement relates to the invention in respect of which that application is made; or
- (c) the rights of the claimant in respect of the invention have been finally established by a decision of the High Court or any court to which an appeal against such a decision has been brought.

(4) Where one of two or more joint applicants for a patent has died at any time before the patent has been granted, the Registrar, if satisfied of such decease, may alter the application by substituting the legal representative of such deceased applicant and shall thereafter seal the application in the names of the surviving applicants and of such legal representative unless, upon a request in that behalf made by the survivor or survivors, and with the consent of such legal representative, the Registrar directs that the application shall proceed and be sealed in the name of the survivor or survivors alone.

(5) If any dispute arises between joint applicants for a patent whether or in what manner the application should be proceeded with, the Registrar may, upon application made to him in the prescribed manner by any of the parties, and after giving to all parties concerned an opportunity to be heard, give such directions as he thinks fit for enabling the application to proceed in the name of one or more of the parties alone or for regulating the manner in which it shall be proceeded with, or for both those purposes, as the case may require.

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

(As amended by Act No. 18 of 1980)

24. (1) In this section the expression "competent authority" means the Minister designated as a competent authority by the President in the *Gazette*.

Provisions for
secrecy of
certain
inventions

(2) Where, before or after the commencement of this Act, an application for a patent has been made in respect of an invention, and it appears to the Registrar that the invention is one of a class notified to him by a competent authority as relevant for defence purposes, he may give directions for prohibiting or restricting the publication of information with respect to the invention, or the communication of such information to any person or class of persons specified in the directions, and while such directions are in force the application may, subject to the directions, proceed up to the acceptance of the complete specification, but the acceptance shall not be advertised nor the specification published, and no patent shall be granted in pursuance of the application.

(3) Where the Registrar gives any such directions as aforesaid, he shall give notice of the application and of the directions to the competent authority, and thereupon the following provisions shall have effect, that is to say:

- (a) the competent authority shall, upon receipt of such notice, consider whether the publication of the invention would be prejudicial to the defence of the Republic and unless a notice under paragraph (c) has previously been given by that authority to the Registrar, shall reconsider that question before the expiration of nine months from the date of lodging of the application for the patent and at least once in every subsequent year;
- (b) for the purpose aforesaid, the competent authority may, at any time after the complete specification has been accepted or, with the consent of the applicant, at any time before the complete specification has been accepted, inspect the application and any documents furnished to the Registrar in connection therewith;
- (c) if upon consideration of the invention at any time it appears to the competent authority that the publication of the invention would not, or would no longer, be prejudicial to the defence of the Republic, that authority shall give notice to the Registrar to that effect;
- (d) on the receipt of any such notice the Registrar shall revoke the directions and may, subject to such conditions, if any, as he thinks fit, extend the time for doing anything required or authorised to be done by or under this Act in connection with the application, whether or not that time has previously expired.

(4) When directions have been given under this section, if any use of the invention is made during the continuance in force of such directions by or on behalf of or to the order of a Government department, the provisions of section *forty* shall apply in relation to that use as if a patent had been granted for the invention.

(5) If an applicant for a patent has suffered loss or damage by reason of his invention having been kept secret in pursuance of a direction under subsection (2), the Minister, with the consent of the Minister responsible for finance, shall pay to him such reasonable compensation as is agreed upon, or, in default of agreement, as may be determined by the High Court on a reference under subsection (1) of section *forty-two*.

(6) Where a patent is granted in pursuance of an application in respect of which directions have been given under this section, no renewal fees shall be payable in respect of any period during which those directions were in force.

(7) If any person fails to comply with any direction given under this section, he shall be guilty of an offence.

(As amended by G.N. No. 185 of 1964, S.I. No. 175 of 1965 and Act No 18 of 1980)

PART V

GRANT, EFFECT AND TERM OF PATENT

Grant and
sealing of
patent

25. (1) If the conditions precedent to the grant of a patent, as prescribed in this Act, have been complied with and there is no opposition to such grant or, in the event of such opposition, the final determination is in favour of the grant of a patent, a patent shall be granted to the applicant, or, in the case of an application by two or more persons jointly, to the applicants jointly, and the Registrar shall cause the patent to be sealed with the seal of the Patent Office:

Provided that—

- (i) where an applicant under a joint application has died, the patent may, with the consent of his heir or legal representative, be granted to the survivors of the joint applicants;
- (ii) where an applicant has agreed in writing to assign the invention or a share in the invention or, in the case of an application by two or more persons jointly, his interest in the invention, to another person, the patent may, upon proof of the agreement to the satisfaction of the Registrar, be granted to and in the name of the assignee either solely or jointly with the applicant or, in the case of an application

by two or more persons jointly, to and in the name of the assignee jointly with the other applicants or their assignees.

(2) A patent shall be sealed as soon as may be, but not later than twenty-two months after the date of lodging of the application therefor:

Provided that—

- (i) where the Registrar or the High Court has allowed an extension of the time within which a complete specification may be lodged or accepted, a corresponding extension of the time for the sealing of the relevant patent shall be allowed;
- (ii) where the sealing is delayed by an appeal or by opposition to the grant of the patent; the patent may be sealed at such time as the Registrar may determine;
- (iii) where the patent is to be granted to the heir or 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 such later time as the Registrar may decide;
- (iv) the Registrar may, on payment of the prescribed fee, extend the period of twenty-two months for such further time as may be prescribed;
- (v) where it is proved to the satisfaction of the Registrar that hardship would arise in connection with the prosecution of the corresponding application for a patent in any country outside Zambia unless the period for the sealing of such patent is extended, that period may be extended from time to time by the Registrar to such periods as appear to him to be necessary in order to prevent the hardship arising, if an application in that behalf is made to him and the prescribed fee is paid within the first-mentioned period or, in the case of a subsequent application under this paragraph, within the period to which such first-mentioned period was extended on the last preceding application.

*(As amended by G.N. No. 185 of 1964
and Act No 18 of 1980)*

26. Where, at any time after a patent has been sealed in pursuance of an application under this Act, the Registrar is satisfied that the person to whom the patent was granted had died, or, in the case of a body corporate, had ceased to exist, before the patent was sealed,

Amendment
of patent
granted to
deceased
applicant

he may amend the patent by substituting for the name of that person the name of the person entitled thereto according to law, and the patent shall have effect, and shall be deemed always to have had effect, accordingly.

Date of patent

27. (1) Subject to the provisions of this Act, the date of a patent shall be—

- (a) in the case of a patent granted under this Act, the effective date of the application therefor;
- (b) in the case of a patent granted under the Patents (Southern Rhodesia) Act, Chapter 208 of the 1948 Edition of the Laws, the date the patent was sealed;
- (c) in the case of a patent registered under the Registration of United Kingdom Patents Act, Chapter 205 of the 1957 Edition of the Laws, the date of the patent in the United Kingdom;
- (d) in the case of a patent granted under the *Patents (Transitional Provisions) Act, 1958, the date specified in paragraph (b) or (c), as the case may be.

(2) The date of a patent referred to in paragraph (a) or (d) of subsection (1) shall be entered in the register.

(3) The date of a patent referred to in paragraph (a) or (d) of subsection (1) shall be inserted in the patent.

(No. 12 of 1959 as amended by G.N. No. 185 of 1964 and S.I. No. 175 of 1965)

Extent, effect
and form of
patent

28. (1) Subject to the provisions of this Act, a patent shall have the same effect against the State as it has against a subject.

(2) A patent shall be in such form as may be prescribed.

(3) A patent shall be granted for one invention only, but 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.

(4) The effect of a patent shall be to grant to the patentee, subject to the provisions of this Act and the conditions of the patent, full power, sole privilege and authority by himself, his agents and licensees during the term of the patent to make, use, exercise and vend the invention within Zambia in such a manner as to him seems meet, so that he shall have and enjoy the whole profit and advantage accruing by reason of the invention during the term of the patent.

(As amended by G.N. No. 185 of 1964 and S.I. No. 175 of 1965)

29. The term of every patent shall, subject to the provisions of this Act, be— Term of patent

- (a) in the case of a patent granted under this Act, sixteen years from the date of lodging of the complete specification at the Patent Office;
- (b) in the case of a patent granted under the Patents (Southern Rhodesia) Act, Chapter 208 of the 1948 Edition of the Laws, fourteen years from the date the patent was sealed;
- (c) in the case of a patent registered under the Registration of United Kingdom Patents Act, Chapter 205 of the 1957 Edition of the Laws, the term of the relevant United Kingdom patent;
- (d) in the case of a patent granted under the Patents (Transitional Provisions) Act, 1958, the period specified in paragraph (b) or (c), as the case may be.

*(No. 12 of 1959 as amended by G.N. No. 185 of 1964
and S.I. No. 175 of 1965)*

30. (1) A patentee or an exclusive licensee may, after advertising in the prescribed manner, apply to the Registrar for an extension of the term of the relevant patent on any one or more of the following grounds, namely: Extension of patent

- (a) that he has not derived adequate remuneration from that patent;
- (b) that by reason of hostilities between the Republic or any country of the Commonwealth and any foreign state, he has suffered loss or damage including—
 - (i) loss or damage arising out of action taken in pursuance of an official request to keep secret the specification of the invention to which the patent relates; and
 - (ii) loss of opportunity for dealing in or developing the invention on account of—
 - A. the fact that he or his employees were engaged in work of national importance; or
 - B. lack of supplies or loss of markets as a result of such hostilities, wherever such lack or loss occurs.

(2) Any such application may be made—

- (a) in the case of an application under paragraph (a) of subsection (1), not more than twelve and not less than six months before the date of expiration of the term of the patent in question or at such later time, being not later than the date of expiration of the patent, as the Registrar may allow; and

(b) in the case of an application under paragraph (b) of subsection (1), at any time before the date of expiration of the patent or within two years after the date on which hostilities ceased, whichever is the later date.

(3) Any person may within the prescribed time give written notice to the Registrar and the applicant of objection to any such extension, and the Registrar shall fix a date for the hearing of the application and shall advise the applicant and any objector of the date so fixed.

(4) The Registrar may, after hearing the applicant and any person who may have objected to the extension, refuse the application or order the extension of the term of the patent in question for such period and subject to such conditions as it may deem fit or, if the patent has already lapsed, order the issue of a new patent for such a period and subject to such conditions:

Provided that no such extension shall be granted—

- (i) on the grounds mentioned in paragraph (a) of subsection (1) for a term exceeding five years or, in what the Registrar may deem to be exceptional circumstances, ten years; or
- (ii) on the grounds mentioned in paragraph (b) of subsection (1), for a term exceeding the period of hostilities.

(5) The provisions of section *thirty-four* shall *mutatis mutandis* apply in respect of any extension of the term of a patent granted as a result of an application under paragraph (b) of subsection (1):

Provided that in the application of those provisions the reference in that section to a period of three months from the date on which any renewal fee referred to therein was due shall be construed as a reference to the date on which any patent whereof the term is extended under this section lapsed by effluxion of time.

(6) An extension of the term of a patent under this section shall be endorsed on the relevant patent by the Registrar and recorded in the register.

(7) Except where the Registrar otherwise decides, an application based on the grounds specified in paragraph (b) of subsection (1) shall not be considered if the patentee or exclusive licensee is a subject of such foreign state as is referred to in that paragraph or is a company the business whereof is managed or controlled by such subjects or is carried on wholly or mainly for the benefit or on behalf of such subjects, notwithstanding that the company may be registered in accordance with the provisions of the Companies Act.

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

(As amended by G.N. No. 185 of 1964; S.I. No. 175 of 1965 and Act No. 18 of 1980)

31. (1) Subject to the provisions of this section, where an application for a patent is pending or has been granted thereon for an invention (hereinafter referred to as the main invention) and the applicant or patentee applies for a further patent in respect of any improvement in or modification of the main invention, the Registrar may, if the applicant so requests, grant a patent for the improvement or modification as a patent of addition.

Patents of
addition

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

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

(4) A patent of addition shall not be sealed before the sealing of the patent for the main invention, and if the period within which, but for this provision, the sealing of a patent of addition could be made under section 25, *five* expires before the period within which the sealing of the patent for the main invention may be so made, the sealing of the patent of addition may be made at any time within the last-mentioned period.

(5) A patent of addition shall remain in force for as long as the patent for the main invention shall remain in force, including any extension of the term thereof but no longer, and no fees shall be payable for renewal of a patent of addition:

Provided that, where the patent for the main invention is revoked, the Registrar or the High Court, as the case may be, may order that the patent of addition shall become an independent patent, and the fees payable in respect of such independent patent and the times for the payment thereof shall be determined according to the date of the former patent of addition, but the normal term of the independent patent shall not extend beyond the date on which the patent for the main invention would have expired if it had not been revoked.

(6) The grant of a patent of addition shall be conclusive evidence that the invention is a proper subject for such a patent, and shall not

be refused, nor shall any such patent be liable to be revoked or invalidated, on the ground only that the invention claimed in the complete specification does not involve any inventive step having regard to the main invention, so, however, that the provisions of this subsection shall not apply to an independent patent referred to in the proviso to subsection (5).

(7) A patent for a main invention and its patent of addition shall not be capable of assignment apart from one another.

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

(As amended by Act No. 18 of 1980)

Renewal of
patents

32. (1) Subject to the provisions of this section, every patent, including a patent granted or registered under the Registration of United Kingdom Patents Act, Chapter 205 of the 1957 Edition of the Laws, or the Patents (Southern Rhodesia) Act, Chapter 208 of the 1948 Edition of the Laws, or the Patents (Transitional Provisions) Act, 1958, shall lapse if the fees prescribed for its renewal are not paid within the prescribed times.

(2) The Registrar may, upon application of the patentee and subject to the payment of such additional fees as may be prescribed, extend the time for payment of a fee referred to in subsection (1) for a period not exceeding six months.

*(No. 12 of 1959 as amended by No. 36 of 1960,
G.N. No. 185 of 1964 and S.I. No. 175 of 1965)*

Restoration of
lapsed patents

33. (1) Where a patent has lapsed owing to the failure of the patentee to pay any prescribed fee within the prescribed time, the patentee may in the prescribed manner apply to the Registrar for the restoration of the patent.

(2) If the Registrar is satisfied that such failure was unintentional, and that no undue delay has occurred in making the application, he shall direct the patentee to advertise the application in the prescribed manner, and thereupon any person may within such time as may be prescribed give notice in the prescribed manner of opposition to the restoration of the patent.

(3) If there is no opposition to such restoration, the Registrar shall, on payment of the unpaid renewal fees, make an order restoring the patent.

(4) Where notice of opposition is given, the Registrar shall notify the applicant thereof and shall, after the expiration of the prescribed period and after hearing the applicant and the objector, decide the matter and make an order either restoring the patent, subject to the provisions of section *thirty-four*, or dismissing the application.

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

34. In every order restoring a lapsed patent made under section *thirty-three*, there shall be inserted for the protection of persons who may have availed themselves of the subject-matter of the patent after a lapse of a period of three months from the date on which the renewal fee was due, the following provisions, namely, that the patentee shall not commence or prosecute any action or other proceedings or recover damages:

Protective provisions to be inserted in order for restoration of patent

- (a) in respect of any infringement of the patent which has taken place after the lapse of the said period and before the date of the order;
- (b) in respect of any use of the subject-matter of the patent at any time after the date of the order by the employment of any means or composition of matter actually made within or imported into Zambia, or in respect of any process put into operation in Zambia in infringement of the patent after the lapse of the said period and before the date of the order, or in respect of the sale, purchase or use of any article which is the product of the use of the said means, composition of matter or process:

Provided that the employment of the said means, composition of matter or process shall be limited to the person by or for whom the said means, composition of matter or process was so made, imported or put into operation, his legal representative, his successors or assigns, or his vendees, as the case may be;

- (c) in respect of the employment at any time after the date of the order of any further means, composition of matter or process, being a reproduction or improvement of the means, composition of matter or process referred to in paragraph (b) or in respect of the sale, purchase or use of any article which is the product of the said further means, composition of matter or process:

Provided that the employment of the said further means, composition of matter or process shall be limited to a person entitled to use, as aforesaid the means, composition of matter or process specified in that paragraph.

(As amended by G.N. No. 185 of 1964)

35. (1) At any time after the sealing of a patent the patentee may apply to the Registrar for the patent to be endorsed with the words "licences of right" and where such an application is made, the Registrar shall notify the application to any person entered on the register as entitled to an interest in the patent and if satisfied, after giving any such person an opportunity to be heard, that the patentee is not precluded by contract from granting licences under the

Endorsement of patent "licences of right"

patent, cause the patent to be endorsed accordingly, so, however, that no such endorsement shall be made in respect of an exclusive licence.

(2) Where a patent is endorsed under this section—

- (a) any person shall, at any time thereafter, be entitled as of right to a licence under the patent upon such terms as may, in default of agreement and subject to the provisions of subsection (3), be settled by the Registrar on the application of the patentee or the person requiring the licence;
- (b) the Registrar may, on the application of the holder of any licence granted under the patent before the endorsement, order the licence to be exchanged for a licence to be granted by virtue of the endorsement upon terms to be settled as aforesaid;
- (c) if in proceedings for infringement of the patent, otherwise than by the importation of goods, the defendant undertakes to take a licence upon terms to be settled by the Registrar as aforesaid, no interdict or injunction shall be granted against him, and the amount, if any, recoverable against him by way of damages shall not exceed double the amount which would have been payable by him as licensee if such a licence had been granted before the earliest infringement;
- (d) the renewal fees payable in respect of the patent after the date of the endorsement shall be one-half of the renewal fees which would be payable if the patent were not so endorsed.

(3) In settling the terms of the licence for the purposes of paragraph (a) or (b) of subsection (2), the Registrar shall—

- (a) take cognizance of the provisions of section *thirty-eight* with respect to a patent falling under that section; and
- (b) provide, *inter alia*, for the following matters:
 - (i) the period of the licence;
 - (ii) the terms of renewal, if any;
 - (iii) the amount of and method for payment of royalties;
 - (iv) arrangements for cancellation of the licence upon application made to him by the patentee after failure by the licensee to pay royalties or to observe any other conditions included in the licence by the Registrar, who is hereby authorised to include such conditions, so, however, that no such licence may be cancelled unless the licensee, after reasonable notice given to him by the patentee, has failed to observe such conditions.

(4) The licensee under any licence granted by virtue of the endorsement of a patent under this section shall, unless in the case of a licence the terms of which are settled by agreement the licence otherwise expressly provides, be entitled to call upon the patentee to take proceedings to prevent any infringement of the patent, and if the patentee refuses or neglects to do so within two months after being so called upon, the licensee may institute proceedings for the infringement in his own name as if he were patentee, making the patentee a defendant:

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

(5) An application for the endorsement of a patent under this section shall contain a statement, to be verified in such manner as may be prescribed, that the patentee is not precluded by contract from granting licences under the patent, and the Registrar may require from the applicant such further evidence as he may think necessary.

(6) An application made under this section for the endorsement of a patent of addition shall be treated as an application for the endorsement of the patent for the main invention also, and an application made under this section for the endorsement of a patent in respect of which a patent of addition is in force shall be treated as an application for the endorsement of the patent of addition also, and where a patent of addition is granted in respect of a patent already endorsed under this section, the patent of addition shall also be so endorsed:

Provided that no royalty shall be paid by a licensee in respect of such endorsement.

(7) All endorsements of patents under this section shall be entered in the register and shall be published in the prescribed manner.

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

36. (1) Within such time as may be prescribed after a patent has been endorsed under section *thirty-five*, the patentee may apply to the Registrar for cancellation of the endorsement and where such an application is made and the balance paid of all renewal fees which would have been payable if the patent had not been endorsed, the Registrar may, if satisfied that there is no existing licence under the patent or that all licensees under the patent consent to the application, cancel the endorsement accordingly.

Cancellation
of endorse-
ment made
under section
35

(2) Within the prescribed period after a patent has been endorsed as aforesaid, any person who claims that the patentee is, and was at

the time of the endorsement, precluded by a contract in which the claimant is interested from granting licences under the patent may apply to the Registrar for cancellation of the endorsement.

(3) Where the Registrar is satisfied, on application made under subsection (2), that the patentee is and was precluded as aforesaid, he shall cancel the endorsement, and thereupon the patentee shall be liable to pay, within such period as may be prescribed, a sum equal to the balance of all renewal fees which would have been payable if the patent had not been endorsed, and if that sum is not paid within that period the patent shall cease to have effect at the expiration of that period.

(4) Where the endorsement of a patent is cancelled under this section, the rights and liabilities of the patentee with respect to it shall thereafter be the same as if the endorsement had not been made.

(5) An applicant shall advertise in the prescribed manner any application made by him under this section and within the prescribed period after such advertisement—

- (a) in the case of an application under subsection (1), any person interested; and
- (b) in the case of an application under subsection (2), the patentee and either additionally or alternatively any person interested;

may give notice to the Registrar of opposition to the cancellation.

(6) Where any such notice of opposition is given, the Registrar shall fix a date for the hearing of the application and shall advise in writing the parties of the date so fixed, and shall, after giving the applicant and the opponent an opportunity to be heard, give such decision on the application as he may consider just.

(7) An application made under this section for the cancellation of the endorsement of a patent of addition shall be treated as an application for the cancellation of the endorsement of the patent for the main invention also, and an application made under this section for the cancellation of the endorsement of a patent in respect of which a patent of addition is in force shall be treated as an application for the cancellation of the endorsement of the patent of addition also.

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

37. (1) Subject to the provisions of subsection (14), any person interested who can show that he has been unable to obtain a licence under a patent on reasonable terms may, after the expiration of a period of three years subsequent to the date on which that patent was sealed or four years subsequent to the date on which the application in respect thereof was lodged, whichever period last expires,

apply to the Registrar in the prescribed manner for a compulsory licence on the ground that the reasonable requirements of the public with respect to the invention in question have not been or will not be satisfied.

(2) Every application under this section shall set out fully the nature of the applicant's interest, the facts on which he bases his case and the relief he seeks, and shall be accompanied by an affidavit verifying the facts set out in such application.

(3) If, after consideration of any such application, the Registrar is satisfied that the applicant has a *bona fide* interest, and that a *prima facie* case for relief has been made out, he shall direct the applicant to serve copies of the application and of the relevant affidavit upon the patentee and upon any other person appearing from the register to be interested in the patent, and to advertise the application in the prescribed manner.

(4) If the patentee or any other person wishes to oppose the grant of a licence under this section, he may, within the prescribed period or within such further period as the Registrar may on application allow, deliver to the Registrar a counter-statement, verified by affidavit, setting out fully the ground on which the application is opposed, and shall at the same time serve upon the applicant copies of the counter-statement.

(5) When, in relation to an application or an opposition thereto, the foregoing provisions of this section have been complied with to the extent therein required, the Registrar shall send all relevant papers to the High Court, and that court shall arrange for the matter to be heard in the manner prescribed and, subject to the provisions of this section, the High Court may make such order therein as it deems just.

(6) The reasonable requirements of the public referred to in subsection (1) shall be deemed not to have been satisfied in any of the following circumstances, namely:

- (a) if the patented invention, being an invention capable of being worked in Zambia, is not being worked therein on a commercial scale and there is no satisfactory reason for such non-working:

Provided that, if an application for a compulsory licence is made on this ground and the High Court is of the opinion that the time which has elapsed since the sealing of the patent has by reason of the nature of the invention or for any other reason been insufficient to enable the invention to be worked within Zambia on a commercial scale, the High Court may make an order adjourning the hearing of the application for such period as will in its opinion be sufficient for that purpose;

- (b) if the working of the invention within Zambia on a commercial scale is being prevented or hindered by the importation of the patented article by the patentee or persons claiming under him, or by persons directly or indirectly purchasing from him or by persons against whom the patentee is not taking or has not taken proceedings for infringement;
- (c) if the demand for the patented article in Zambia is not being met to an adequate extent and on reasonable terms;
- (d) if by reason of the refusal of the patentee to grant a licence or licences upon reasonable terms, the trade or industry of Zambia or the trade of any person or class of persons trading in Zambia, or the establishment of any new trade or industry in Zambia, is being prejudiced, and it is in the public interest that a licence or licences should be granted;
- (e) if any trade or industry in Zambia, or any person or class of persons engaged therein, is being prejudiced by unfair conditions attached by the patentee, whether before or after the commencement of this Act, to the purchase, hire, licence or use of the patented article, or the using or working of the patented process;
- (f) if any condition which under the provisions of section *forty-nine* is null and void as being in restraint of trade and contrary to public policy, has been inserted in any contract made in relation to the sale or lease of or any licence to use or work any article or process protected by the patent:

Provided that, for the purpose of determining whether there has been any abuse of the monopoly rights under a patent, due regard shall be had to the fact that patents are granted not only to encourage invention but also to secure that inventions shall so far as possible be worked on a commercial scale in Zambia without undue delay.

(7) The High Court may order the grant to the applicant of a licence on such terms as it may think expedient, including a term precluding the licensee from importing into Zambia any goods whereof the importation by persons other than the patentee or persons claiming under him, would be an infringement of the patent.

(8) If in respect of an application under this section the High Court is satisfied that the invention which is the subject of the application is not being worked on a commercial scale within Zambia, and is such that it cannot be so worked without the expenditure of capital for the raising of which it will be necessary to rely on the patent monopoly, it may, unless the patentee or those claiming under him will undertake to find such capital, order the grant to the applicant or any other person, or to the applicant jointly with one or more other persons, if able and willing to provide such capital, of an exclusive licence on such terms as the High Court may think just, but subject as hereinafter provided.

(9) The terms of any exclusive licence ordered to be granted under subsection (8) shall, with due regard to the risks to be undertaken by the licensee in providing the capital and working the invention, be so framed as—

- (a) to secure to the patentee the maximum royalty compatible with the successful working of the invention within Zambia on a commercial scale and at a reasonable profit;
- (b) to guarantee to the patentee a minimum yearly sum by way of royalty, if and so far as it is reasonable to do so;

and in addition to any other terms of the licence or order, the licence and the order shall be made revocable at the discretion of the High Court if the licensee fails to—

- (i) work the invention within the time specified in the order;
- (ii) expend the amount specified in the licence as being the amount which he is able and willing to provide for the purpose of working the invention on a commercial scale within Zambia; or
- (iii) pay to the patentee the royalties payable in terms of the licence.

(10) In deciding to whom an exclusive licence is to be granted, the High Court shall, unless good reason is shown to the contrary, prefer an existing licensee to a person who, according to the register, has no interest in the patent.

(11) The order directing the grant of an exclusive licence under this section shall operate to divest the patentee of any right which he may have as patentee to work or use the invention, and to revoke all existing licences, unless otherwise provided in the order, and may, if considered fair and equitable by the High Court, be made subject to the condition that the licensee shall give proper compensation to be fixed by the High Court for any money or labour expended by the patentee or any existing licensee in developing or working the invention.

(12) A licensee under this section shall be entitled to call upon the patentee concerned to institute any proceedings which may be necessary to prevent infringement of the patent in question and shall in all other respects have the same rights as any other licensee, and if the patentee fails within two months after being called upon by the licensee, or within such further period as the High Court may allow, to institute any such proceedings, the licensee may himself institute such proceedings as if he were the patentee, making the patentee a defendant, but the patentee shall not be liable for any costs in connection with such proceedings unless he enters an appearance and takes part in those proceedings.

(13) The existence of a compulsory licence granted solely on the ground that an invention is not being worked in Zambia on a commercial scale shall not preclude the grant of further licences (including compulsory licences) in respect of that invention, but the holder of any compulsory licence shall not be entitled to transfer that licence or grant a sub-licence thereunder except to a person to whom the business, or the part of the business in connection with which the rights under the licence were exercised, has been transferred.

(14) Except in the case of a licence to be granted under subsection (8), no licence shall be granted in terms of this section or of section *thirty-eight* while the relevant patent remains endorsed "licences of right" under section *thirty-five*.

(15) For the purposes of this section, the expression "patented article" includes any article made by a patented process.

(As amended by No. 36 of 1960, G.N. No. 185 of 1964
and Act No. 18 of 1980)

Inventions
relating to
food or
certain other
commodities

38. (1) Subject to the provisions of subsection (14) of section *thirty-seven* and without prejudice to the other foregoing provisions of this Act, where a patent is in force in respect of—

- (a) a substance capable of being used as food or medicine, or in the production of food or medicine;
- (b) a process for producing such a substance as aforesaid; or
- (c) any invention capable of being used as or as part of a surgical or curative device;

the High Court shall, on application made to it by any person interested, order the grant to the applicant of a licence under the patent on such terms as it thinks fit unless it appears to the Court that there are good reasons for refusing the application.

(2) In setting the terms of licences under this section, the High Court shall endeavour to secure that food, medicines, and surgical and curative devices shall be available to the public at the lowest prices consistent with the patentees deriving a reasonable advantage from their patent rights.

(3) A licence granted under this section shall entitle the licensee to make, use, exercise and vend the invention as a food or medicine, or for the purposes of the production of food or medicine or as part of a surgical or curative device, but for no other purposes.

(As amended by Act No. 18 of 1980)

Supplemen-
tary provisions
as to licences

39. (1) Any order under this Act for the grant of a licence shall, without prejudice to any other method of enforcement, have effect as if it were an agreement executed by the patentee and all other necessary parties granting a licence in accordance with the order.

(2) No order shall be made in pursuance of any application under section *thirty-seven* which would be at variance with the provisions of the Convention.

40. (1) Notwithstanding anything in this Act, any Government department or any person authorised in writing by the Minister may make, use or exercise any invention disclosed in any specification lodged at the Patent Office for the service of the State in accordance with the provisions of this section.

Use of
patented
inventions for
services of the
State

(2) If and so far as the invention has, before the effective date of the relevant claim of the completed specification, been duly recorded by or tried by or on behalf of a Government department or a person authorised in terms of subsection (1), otherwise than in consequence of the communication thereof directly or indirectly by the patentee or any person from whom he derives title, any use of the invention by virtue of this section may be made by such Government department or person free of any royalty or other payment to the patentee.

(3) If and so far as the invention has not been so recorded or tried as aforesaid, any use of the invention made by virtue of this section at any time after the acceptance of the complete specification in respect of the patent, or in consequence of any such communication as aforesaid, shall be made upon such terms as may be agreed upon, either before or after the use, between the Minister and the patentee with the approval of the Minister responsible for finance, or as may in default of agreement be determined by the High Court on a reference under subsection (1) of section *forty-two*.

(4) The authority of the Minister in respect of an invention may be given under this section either before or after the patent is granted and either before or after the acts in respect of which the authority is given are done, and may be given to any person, whether or not he is authorised directly or indirectly by the patentee to make, use, exercise or vend the invention.

(5) Where any use of an invention is made by or with the authority of the Minister under this section, then, unless it appears to him that it would be contrary to the public interest so to do, the Minister shall notify the patentee as soon as practicable after the use is begun, and furnish him with such information as to the extent of the use as he may from time to time require.

(6) For the purposes of this section, section *forty-one* and section *forty-two*, any use of an invention for the supply to the government of any country outside Zambia, in pursuance of any agreement or arrangement between the Government and the government of that country, of articles required for the defence of that country shall be deemed to be a use of the invention for the services of the State, and the power of a Government department or a person authorised by the

Minister under this section to make, use and exercise an invention shall include power—

- (a) to sell such articles to the government of any country in pursuance of any such agreement or arrangement as aforesaid; and
- (b) to sell to any person any articles made in the exercise of the powers conferred by this section which are no longer required for the purpose for which they were made.

(7) The purchaser of any articles sold in the exercise of powers conferred by this section, and any person claiming through him, shall have power to deal with them in the same manner as if the patent were held on behalf of the President.

(8) The Minister may, by statutory instrument, make regulations governing the rights of third parties in relation to any use of a patented invention, or an invention in respect of which an application for a patent is pending, made for the services of the State in terms of this section or section *forty-one*.

(As amended by G.N. No. 185 of 1964, S.I. No. 175 of 1965 and Act No. 18 of 1980)

Special provisions as to State use during emergency

41. (1) For the purposes of this section, the expression “period of emergency” means any period beginning on such date as may be declared by the Minister by statutory notice to be the commencement, and ending on such date as may be so declared to be the termination, of a period of emergency.

(2) During any period of emergency the powers exercisable in relation to an invention by a Government department or a person authorised by the Minister under section *forty*, shall include power to make, use, exercise and vend the invention for any purpose which appears to the Minister necessary or expedient—

- (a) for the efficient prosecution of any war in which the Republic may be engaged;
- (b) for the maintenance of supplies and services essential to the life of the community;
- (c) for securing a sufficiency of supplies and services essential to the well-being of the community;
- (d) for promoting the productivity of industry, commerce and agriculture;
- (e) for fostering and directing exports and reducing imports or imports of any classes, from all or any countries and for redressing the balance of trade;
- (f) generally for ensuring that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community; or

- (g) for assisting the relief of suffering and the restoration and distribution of essential supplies and services in any part of Her Britannic Majesty's dominions or any foreign countries that are in grave distress as the result of war;

and any reference in that section or in section *forty-two* to the services of the State shall be construed as including a reference to the purposes aforesaid.

(As amended by G.N. No. 185 of 1964
and S.I. No. 175 of 1965)

42. (1) Any dispute as to—

Reference of
disputes as to
State use

- (a) the exercise by a Government department or a person authorised by the Minister of the powers conferred by section *forty*;
- (b) the terms for the use of an invention for the services of the State thereunder;
- (c) the compensation payable upon a reference to the High Court under subsection (5) of section *twenty-four*; or
- (d) the right of any person to receive any part of a payment determined in terms of paragraph (b) or (c);

may be referred to the High Court by any party to the dispute in such manner as may be prescribed.

(2) In any proceedings under this section to which a Government department is a party, the Minister may—

- (a) if the patentee is a party to the proceedings, apply for revocation of the patent upon any ground upon which a patent may be revoked under section *fifty*;
- (b) in any case, put in issue the validity of the patent without applying for its revocation.

(3) If in such proceedings as aforesaid any question arises whether an invention has been recorded or tried as mentioned in section *forty*, or has been used by or on behalf of or to the order of a Government department under subsection (4) of section *twenty-four*, and the disclosure of any document recording the invention, or of any evidence of the trial or use thereof, would, in the opinion of the Minister, be prejudicial to the public interest, the disclosure may be made confidentially to counsel appearing for the other party or to an independent expert agreed upon by the parties.

(4) In determining under this section any dispute between a Government department and any person as to terms for the use of an invention for the services of the State, the High Court shall have regard to any benefit or compensation which that person or any person from whom he derives title may have received, or may be

entitled to receive, directly or indirectly from any Government department in respect of the invention in question.

*(As amended by S.I. No. 175 of 1965
and Act No. 18 of 1980)*

PART VI

SPECIAL PROVISIONS RELATING TO SPECIFICATIONS, ANTICIPATION AND RIGHTS IN INVENTIONS

Amendment
of specifica-
tion by
Registrar

43. (1) An applicant for a patent or a patentee may, at any time by request in writing lodged at the Patent Office, seek leave to amend either his provisional or his complete specification, including drawings forming part thereof, and shall in making any such request state the nature of the proposed amendment and the reasons therefor.

(2) Where there are joint applicants or patentees, the request shall be made by them jointly or by one or more of them with the written consent of the other or others, and in the case of disagreement between them the Registrar may, if satisfied that one or more of them should be allowed to proceed alone and subject to such conditions as he may impose, permit the request to be made without the consent of the others:

Provided that all parties interested shall be notified by the applicant of the request and be entitled to be heard before any decision is given thereon.

(3) An amendment of an accepted complete specification shall be allowed only if it is by way of disclaimer, correction or explanation, and no amendment of any specification, except by way of correcting an obvious mistake, shall be allowed if the result would be that the specification as amended would claim or describe matter not in substance disclosed in the specification before amendment, or would include any claim not wholly within the scope of a claim included in the specification before amendment.

(4) The request for an amendment of an accepted complete specification and its nature shall be advertised by the applicant in the prescribed manner, and at any time within three months of the advertisement, or such further time as the Registrar, subject to such conditions as he may impose, may allow, any person may give notice at the Patent Office of opposition to the amendment.

(5) Notice of opposition shall be given in the prescribed manner to the Registrar and to the person making the request, and the Registrar shall hear the person making the request and the person who has given notice of opposition and determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(6) Where a complete specification has not been accepted or, if it has been accepted, no notice of opposition has been given or any such notice has been withdrawn, the Registrar shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(7) No request for amendment under this section shall be allowed if and so long as any proceedings are pending for infringement or revocation of the patent in question.

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

44. In any action for infringement of a patent or any proceedings before the High Court for the revocation of a patent, that court may, subject to the provisions of subsection (3) of section *forty-three*, allow the patentee to amend his complete specification in such manner and subject to such terms as to costs, advertisement or otherwise as that court may think fit, and, if in any such proceedings for revocation the High Court decides that the patent is invalid, it may allow the specification to be amended under this section instead of revoking the patent.

Amendment of specification with leave of High Court

(As amended by Act No. 18 of 1980)

45. Where an amendment of a specification by way of disclaimer, correction or explanation has been allowed under this Act after the publication of the specification, no damages shall be awarded in any proceedings in respect of the use of the invention before the date of the decision allowing the amendment, unless the High Court is satisfied that the specification as originally published was framed in good faith and with reasonable skill and knowledge.

Restrictions on recovery of damages in certain cases

(As amended by Act No. 18 of 1980)

46. (1) A patent shall not be refused or held to be invalid by reason only of the fact that the invention in respect of which the patent is applied for or was granted or any part thereof was published, used or known prior to the effective date of the application, if the applicant or the patentee, as the case may be, proves that the knowledge was acquired or the publication or use was made without his knowledge or consent, and that the knowledge acquired or the matter published or used was derived or obtained from him, and, if he learnt of the disclosure, use or knowledge before the effective date of his application for the patent, that he applied for and obtained protection for his invention with all reasonable diligence after learning of the disclosure:

Savings for anticipation

Provided that the protection afforded by this section shall not extend to a patentee or an applicant for a patent who has or whose predecessors in title have prior to the effective date of the application worked the invention in the former Federation of Rhodesia and

Nyasaland or, after the 1st January, 1964, in the former Protectorate of Northern Rhodesia or, after the 24th October, 1964, in the Republic commercially, otherwise than for the purpose of reasonable technical trial thereof.

(2) An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of the communication of the invention to a Government department or to any person authorised by the Minister to investigate the invention or its merits, or of anything done by any person whomsoever in consequence of such a communication, for the purpose of the investigation.

*(As amended by G.N. No. 185 of 1964
and S.I. No. 175 of 1965)*

Co-ownership
of patents

47. (1) Where a patent is granted to two or more persons, each of those persons shall, unless an agreement to the contrary is in force, be entitled to an equal undivided share in the patent.

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

(3) Subject to the provisions of subsections (6), (7) and (8) and to any agreement for the time being in force, a licence under a patent shall not be granted, and a share in a patent shall not be assigned, except with the consent of all persons, other than the licensor or assignor, who are registered as patentees.

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

(5) Subject to the provisions of this section, the rules of law applicable to the ownership and devolution of movable or personal property generally shall apply in relation to patents as they apply in relation to other incorporeal rights or choses in action.

(6) Where two or more persons are registered as patentees, the Registrar may, upon application made to him in the prescribed manner by any of those persons, give such directions in accordance with the application as to the sale or lease of the patent or any interest therein, the grant of licences under the patent or the exercise of any right under subsections (1) to (5) in relation thereto, as he thinks fit.

(7) If any person registered as patentee fails to execute any instrument or to do any other thing required for the carrying out of any direction given under this section within fourteen days after being requested in writing so to do by any of the other persons so regis-

tered, the Registrar may, upon application made to him in the prescribed manner by any such other person, give directions empowering any person to execute that instrument or to do that thing in the name and on behalf of the person in default.

(8) Before giving directions in pursuance of an application under subsection (6) or (7), the Registrar shall give an opportunity to be heard—

- (a) in the case of an application under subsection (6), to the other person or persons registered as patentees;
- (b) in the case of an application under subsection (7), to the person in default.

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

(10) No directions shall be given under this section so as to affect the mutual rights or obligations of trustees or of the legal representatives of a deceased person, or their rights or obligations as such.

48. (1) Where a dispute arises between an employer and a person who is or was at the material time his employee as to the rights of the parties in respect of an invention made by the employee either alone or jointly with other employees or in respect of any patent granted or to be granted in respect thereof, the Registrar may, upon application made to him in the prescribed manner by either of the parties, and after giving to each of them an opportunity to be heard, determine the matter in dispute, and may make such orders for giving effect to his decision as he considers expedient.

Disputes as to inventions made by employees

(2) In proceedings before the High Court between an employer and a person who is or was at the material time his employee, or upon an application made to the Registrar under subsection (1), the High Court or Registrar, as the case may be, may, unless satisfied that one or other of the parties is entitled, to the exclusion of the other, to the benefit of an invention made by the employee, by order provide for the apportionment between them of the benefit of the invention, and of any patent granted or to be granted in respect thereof, in such manner as the High Court or Registrar considers just

(3) A decision of the Registrar under this section shall have the same effect as between the parties and persons claiming under them as a decision of the High Court.

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

Avoidance of
certain
restrictive
conditions in
contracts

49. (1) It shall not be lawful in any contract made after the commencement of this Act in relation to the sale or lease of or a licence to use or work any article or process protected by a patent to insert a condition the effect of which will be—

- (a) to prohibit or restrict the purchaser, lessee or licensee from using any article or class of articles, whether patented or not, or any patented process, supplied or owned by any person other than the seller, lessor or licensor or his nominee; or
- (b) to require the purchaser, lessee or licensee to acquire from the seller, lessor or licensor or his nominee any article or class of articles not protected by the patent;

and any such condition shall be null and void, as being in restraint of trade and contrary to public policy:

Provided that this subsection shall not apply if—

- (i) the seller, lessor or licensor proves that at the time the contract was entered into, the purchaser, lessee or licensee had the option of purchasing the article or obtaining a lease or licence on reasonable terms without such conditions as aforesaid; and
- (ii) the contract entitles the purchaser, lessee or licensee to relieve himself of his liability to observe any such condition on giving the other party three months' notice in writing and on payment, if the Registrar so directs, of compensation for such relief, in the case of a purchase of such sum, or in case of a lease or licence of such rent or royalty for the residue of the term of the contract, as may be fixed by the Registrar.

An appeal shall lie from any decision of the Registrar under proviso (ii).

(2) Any contract relating to the lease of or licence to use or work any patented article or patented process may, at any time after the patent or all the patents by which the article or process was protected in Zambia at the time of the making of the contract has or have ceased to be in force, and notwithstanding anything to the contrary in the same or in any other contract, be determined by either party on giving three months' notice in writing to the other party.

(3) Nothing in this section shall—

- (a) affect any condition in a contract whereby any person is prohibited from selling any goods other than those of a particular person;
- (b) be construed as validating any contract which would, apart from this section, be invalid;

- (c) affect any right of determining a contract or condition in a contract exercisable independently of this section;
- (d) affect any condition in a contract for the lease of or a licence to use a patented article, whereby the lessor or licensor reserves to himself or his nominee the right to supply such new parts of the patented article as may be required to put or keep it in repair.

(As amended by G.N. No. 185 of 1964).

50. (1) Application for revocation of a patent may be made to the High Court by any person interested, including the State, upon any one or more of the grounds on which the grant of a patent might have been opposed, but subject to the provisions of subsection (2), of proviso (ii) to paragraph (b) of subsection (7) of section *eight*, and of paragraph (b) of subsection (1) of section *ten*, on no other grounds.

Revocation of
patents

(2) Where an order for the granting of a licence under the patent has been made in pursuance of an application under section *thirty-seven* any person interested may, at any time after the expiration of two years from the date of that order, apply to the High Court for the revocation of the patent upon any of the grounds specified in subsection (6) of the said section *thirty-seven*; and if upon such application the High Court is satisfied—

- (a) that any of the said grounds are established; and
- (b) that the purpose for which an order may be made in pursuance of an application under the said section *thirty-seven* could not be achieved by the making of any further order under that section;

it may order the patent to be revoked.

(3) Any such application shall state the grounds on which the applicant relies, and shall be accompanied by a statement setting out particulars of the facts alleged in support of the said grounds, and a copy of the application and of the statement shall be served by the applicant on the patentee and proof of such service shall be furnished to the Registrar.

(4) If the patentee wishes to contest the application made in terms of subsection (1) or subsection (2), he shall, within such time as may be prescribed or such further time as the High Court may allow, lodge at the Patent Office a counter-statement setting out particulars of the grounds upon which the application is contested and deliver to the applicant a copy of that statement.

(5) Except by leave of the High Court, no evidence shall be admitted in proof of any ground, particulars of which are not delivered as aforesaid.

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

(7) The High Court shall appoint a time for the hearing of any such application, and shall thereafter decide whether the patent shall be revoked or whether and, if so, subject to what amendments, if any, of the specification or claims thereof, the patent shall be upheld:

Provided that the High Court—

- (i) shall not allow any amendment of the specification or claims as aforesaid if it is established to its satisfaction that the original complete specification and claims were not framed in good faith and with reasonable skill and knowledge; and
- (ii) may, in the exercise of its discretion as to costs, take into consideration the conduct of the patentee in framing his original specification and claims and permitting them to remain as so framed.

(8) An order for the revocation of a patent under this section may be made so as to take effect either unconditionally or, in the event of failure to comply, within such reasonable period as may be specified in the order, with such conditions as may be imposed by the order with a view to achieving the purposes aforesaid, and the High Court may, on reasonable cause shown in any case, by subsequent order, extend any period so specified.

*(As amended by S.I. No. 175 of 1965
and Act No. 18 of 1980)*

Consequences
of revocation
on grounds of
fraud

51. (1) Where a patent is revoked on the ground of fraud, or a patent fraudulently obtained has been surrendered and revoked, or the grant of a patent has been refused under the provisions of paragraph (b) of subsection (1) of section *twenty-two*, the High Court may, on the application of the person entitled to the invention for Zambia or his legal representative, made in accordance with the provisions of this Act, direct the grant to him of a patent for the whole or any part of the invention, bearing the same date as the patent so revoked or as would have been borne by the patent which has been refused, if the grant thereof had not been refused.

(2) Where in proceedings before the High Court in connection with opposition to the grant of a patent, the High Court has found that an invention was in part obtained from the objector and has required that the specification be amended by the exclusion of that part of the invention, the High Court may direct that, on the application of the inventor or any person claiming through or under him made in accordance with the provisions of this Act within three months after the date of the direction or within such further period as the High Court may allow, a patent for that excluded part of the

invention bearing the date of and having the same effective date as the opposed application be granted to the applicant concerned.

(3) No action shall be brought for any infringement of a patent committed—

- (a) in the case of a patent granted under subsection (1), before the date of sealing thereof; or
- (b) in the case of a patent granted under subsection (2), before the date of advertisement of acceptance of the complete specification lodged in pursuance of the application for such patent.

*(As amended by G.N. No. 185 of 1964
and Act No. 18 of 1980)*

52. (1) A patentee may at any time by notice given to the Registrar offer to surrender his patent.

Surrender of
patents

(2) Where such an offer is made, the patentee shall advertise the offer in the prescribed manner, and within the prescribed period after such advertisement any person interested may give notice to the Registrar of opposition to the surrender.

(3) Where any such notice of opposition is duly given, the Registrar shall notify the patentee.

(4) If the Registrar is satisfied, after hearing the patentee and any opponent, if desirous of being heard, that the patent may properly be surrendered, he may accept the offer and by order revoke the patent.

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

PART VII

INFRINGEMENTS

53. (1) An action for infringement of a patent may only be instituted by the patentee or the exclusive licensee. Such action shall be heard and determined by the Court and, subject to the provisions of any rules made under section *eighty-one*, the following provisions shall apply in connection therewith, namely:

Procedure and
conditions in
action for
infringement

- (a) any ground upon which a patent may be revoked under this Act may be relied upon by way of defence;
- (b) the defendant may, by way of counter-claim in the action, apply for the revocation of the patent;
- (c) the plaintiff shall, with his statement of claim or declaration or on the order of the Court at any subsequent time, deliver full particulars of the infringement complained of;

- (d) the defendant shall, with his statement of defence or plea or on the order of the Court at any subsequent time, deliver particulars of any objections on which he relies in support thereof;
- (e) at the hearing no evidence shall, except by leave of the Court, be admitted of any infringement or on any objections of which particulars have not been so delivered;
- (f) the Court may allow the patentee to amend his specification, subject to such terms as to costs, advertisement or otherwise as it may impose and to the provisions of subsection (3) of section *forty-three*.

(2) In any action under this section where an exclusive licensee is the plaintiff, the patentee shall, unless he is joined as plaintiff in such action, be added as defendant:

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

(3) If the patentee is the plaintiff in any such action, he shall give notice thereof to the exclusive licensee under the patent in question and any such licensee shall be entitled to intervene as a co-plaintiff and to recover any damages he may have suffered as a result of the infringement.

(4) No action under this section shall lie in respect of an infringement which took place before the publication referred to in subsection (2) of section *twenty-one*.

(5) In an action for infringement of a patent, the plaintiff shall be entitled to relief by way of injunction or interdict and damages and the Court may, on application, make such order for an injunction, interdict, damages, inspection or account and impose such terms and give such directions as it may deem fit.

(6) In an action for infringement of a patent in respect of an invention which relates to the protection of a new substance, any substance of the same chemical composition and constitution shall in the absence of proof to the contrary be deemed to have been produced by the patented process.

(As amended by G.N. No. 185 of 1964)

Relief for
infringement
of partially
valid specifi-
cation

54. Where, in any action for the infringement of a patent, the Court finds that any claim in the specification in respect of which the infringement is alleged is valid, but that any other claim thereunder is invalid, then, notwithstanding the provisions of section *fifty-three*, the following provisions shall apply, namely:

- (a) unless the Court is satisfied that the invalid claim was not framed in good faith and with reasonable skill and knowledge, the Court shall, subject to its discretion as to costs and as to the date from which damages should be reckoned, and to such terms as to amendment of the specification as it may deem desirable, grant relief in respect of any valid claim which is or has been infringed, without regard to the invalidity of any other claim in the specification and, in exercising such discretion, the Court may take into consideration the conduct of the patentee in inserting the invalid claim in the specification or permitting that claim to remain there;
- (b) if the Court is so satisfied, it shall not grant any relief by way of damages or costs, but may grant such other relief in respect of any valid claim which is or has been infringed as to it seems just and may impose such terms as to amendment of the specification as a condition of granting any such relief as it may deem desirable;
- (c) if a counter-claim for revocation of the patent has been made in the action on the ground of invalidity of any claim in the specification, the Court may postpone the operation of any order made thereon for such time as may be requisite to enable the patentee to effect any amendment of the specification pursuant to terms imposed by the Court and may attach such other conditions to any order to be made on the counter-claim as the Court may deem desirable.

55. (1) In proceedings for the infringement of a patent, damages shall not be awarded against a defendant who proves that, at the date of the infringement, he was not aware, and had no reasonable grounds for supposing and had no reasonable means of making himself aware, that the patent existed, and the application to an article of the word "patent", "patented", or any word or words expressing or implying that a patent has been obtained for the article, shall not constitute such grounds or means unless the number and year of the patent accompanied the word or words in question.

Restrictions on recovery of damages for infringement

(2) If proceedings are taken in respect of infringement of a patent committed after the failure to pay any fee within the prescribed time and before any extension of time for such payment, the Court may, if it thinks fit, refuse to award any damages in respect of such infringement.

(3) Nothing in this section shall affect the power of the Court to grant an injunction or interdict in any proceedings for the infringement of a patent.

56. (1) Where any person (whether entitled to or interested in a patent or an application for a patent or not) by circulars, advertisements or otherwise threatens any other person with proceedings for infringement of a patent, any person aggrieved thereby may in the

Remedy for groundless threats of infringement proceedings

prescribed manner bring an action against him in the Court for any such relief as is mentioned in subsection (2).

(2) Unless in any action brought by virtue of this section the defendant proves that the acts in respect of which proceedings were threatened constitute or, if done, would constitute, an infringement of a patent or of rights arising from the publication of a complete specification in respect of a claim of the specification not shown by the plaintiff to be invalid, the plaintiff shall be entitled to the following relief, that is to say:

- (a) a declaration to the effect that the threats are unjustifiable;
- (b) an injunction or interdict against the continuance of the threats; and
- (c) such damages, if any, as he has sustained thereby.

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

(4) The defendant in any such action as aforesaid may apply, by way of counter-claim in the action, for any relief to which he would be entitled in a separate action in respect of any infringement by the plaintiff of the patent to which the threats relate.

(As amended by G.N. No. 185 of 1964)

Power of
Court to make
declaration as
to non-
infringement

57. (1) A declaration that the use by any person of any process, or the making or use or sale by any person of any article, does not or would not constitute an infringement of a claim of a patent may be made by the Court in proceedings between that person and the patentee or the holder of an exclusive licence under the patent, notwithstanding that no assertion to the contrary has been made by the patentee or licensee, if it is shown—

- (a) that the plaintiff has applied in writing to the patentee or licensee for a written acknowledgment to the effect of the declaration claimed, and has furnished him with full particulars in writing of the process or article in question; and
- (b) that the patentee or licensee has refused or neglected to give such an acknowledgment.

(2) The costs of all parties in proceedings for a declaration brought by virtue of this section shall be ordered as the Court may deem fit:

Provided that a patentee or holder of an exclusive licence under the patent shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(3) The validity of a claim of the specification of a patent shall not be called in question in proceedings for a declaration brought by

virtue of this section, and accordingly the making or refusal of such a declaration in the case of a patent shall not be deemed to imply that the patent is valid.

(4) Proceedings for a declaration may be brought by virtue of this section at any time after the date of the notice of the acceptance of the complete specification in pursuance of an application for a patent, and references in this section to the patentee shall be construed accordingly.

(As amended by G.N. No. 185 of 1964)

57A. In this Part, unless the context otherwise requires, Court means the High Court.

Definition of Court

PART VIII

ASSIGNMENTS AND CORRECTIONS

58. (1) Subject to the provisions of subsection (7) of section *thirty-one*, the rights granted to a patentee by a patent shall be capable of assignment and of devolution by operation of law and of being mortgaged and pledged.

Provisions as to assignments

(2) Where any person becomes entitled by assignment, transmission or operation of law to a patent or to a share in a patent, or becomes entitled as mortgagee, licensee or otherwise to any other interest in a patent, he may apply to the Registrar in the prescribed manner for the registration of his title as proprietor or co-proprietor, or, as the case may be, of notice of his interest, in the register, and the Registrar shall, upon proof of such entitlement to his satisfaction, register such title or notice against the patent accordingly.

(3) Except for the purposes of an application to rectify the register under the provisions of this Act, a document in respect of which no entry has been made in the register under subsection (2) shall not be admitted in any proceedings as evidence of the title of any person to a patent, or a share of or interest in a patent, unless the High Court or Supreme Court otherwise directs.

*(As amended by G.N. No. 185 of 1964
and Act No. 18 of 1980)*

59. (1) The Registrar may authorise—

- (a) the correction of any clerical error or omission, or error in translation in any patent, application for a patent or document lodged in pursuance of such an application, or in the register;
- (b) the amendment otherwise of any documents for the amending of which no express provision is made in this Act;

Power of Registrar to authorise corrections

(c) the condonation or correction of any irregularity in procedure in any proceedings before him, if such condonation or correction is not detrimental to the interests of any person.

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

(3) Where it is proposed to make a correction otherwise than upon such a request, the Registrar shall give notice of the proposal to the patentee or the applicant for the patent, as the case may be, and to any other person who appears to him to be concerned, and shall give any such person an opportunity of being heard before the correction is made.

(4) Where a request is made for the correction of any such clerical error or omission and it appears to the Registrar that the correction would materially alter the scope of the document to which the request relates, the Registrar may require notice of the request to be advertised in the prescribed manner and to be served upon such persons as he considers necessary.

(5) Any opposition to the request for such correction may be lodged and shall be dealt with by the Registrar in the manner prescribed.

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

Rectification
of register

60. (1) The High Court may, on the application of any person aggrieved, order the register to be rectified by the making of any entry therein or the variation or deletion of any entry therein.

(2) The High Court may determine any question which it may be necessary or expedient to decide in connection with the rectification of the register.

(3) Notice of any application to the High Court under this section shall be given in the prescribed manner to the Registrar and all interested parties, and the Registrar and all such parties shall be entitled to appear and be heard on the application.

(4) Any order made by the High Court under this section shall be served on the Registrar in the prescribed manner, and the Registrar shall, on the receipt of the notice, rectify the register accordingly.

(As amended by Act No. 18 of 1980)

PART IX

FUNCTIONS OF REGISTRAR IN RELATION TO CERTAIN EVIDENCE,
DOCUMENTS AND POWERS

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

Evidence of
certain entries
and
documents

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

62. The Registrar shall, on the request of any person and on payment of the prescribed fee, furnish copies of any documents which are open to public inspection and which are lodged at the Patent Office or particulars from the register, or furnish a certificate in respect thereof.

Requests for
information as
to patent or
patent
application

63. Where the Registrar is satisfied that a patent has been lost or destroyed or cannot be produced, he may at any time cause a duplicate thereof to be sealed on payment of such fees as may be prescribed.

Loss or
destruction
of patent

64. (1) Without prejudice to any provisions of this Act requiring the Registrar to hear any party to proceedings thereunder, or to give to any such party an opportunity to be heard, the Registrar shall give to any applicant for a patent, or for amendment of a specification, an opportunity to be heard before exercising adversely to the applicant any discretion vested in the Registrar by or under this Act.

Exercise of
discretionary
powers of
Registrar

(2) Subject to the provisions of subsection (2) of section *eighty*, where by this Act any time is specified within which any act or thing is to be done, the Registrar may, save where it is expressly otherwise provided, extend the time, either before or after its expiration, if he is satisfied that the failure to comply with the provisions relating to such time has not been or will not be due to any neglect or default on the part of the person concerned.

65. (1) Evidence in any proceedings before the Registrar under this Act shall be given by affidavit, so, however, that the Registrar may, if he thinks fit in any particular case, take oral evidence on oath in lieu of or in addition to such evidence as aforesaid, and may allow any witness to be cross-examined on his affidavit or oral evidence.

Proceedings
before
Registrar

(2) The powers, rights and privileges of the Registrar in proceedings before him under this Act shall be the same as those con-

Cap. 41

ferred upon commissioners by the Inquiries Act and the provisions of that Act shall, *mutatis mutandis*, apply in relation to the hearing and determination of any matter before the Registrar under this Act and to any person summoned to give evidence or giving evidence before him.

(As amended by G.N. No. 185 of 1964)

Advertisements to be approved by Registrar

66. No advertisement or notice, other than a notice issued under the authority of the President or the Minister, shall be published by any person under the provisions of this Act unless it is in the prescribed form and the Registrar has approved the contents of such advertisement or notice, and no advertisement or notice which has not been so approved shall have any force or effect for the purposes of this Act.

(As amended by G.N. No. 185 of 1964)

PART X

PATENT AGENTS

Patent agents and their functions

67. (1) Subject to the provisions of this Act, a patent agent may act as agent on behalf of any person in connection with any matter or proceeding before the Registrar under this Act and may draw and sign all documents and make all communications between an applicant and the Patent Office and may represent an applicant at all attendances before the Registrar.

(2) A patent agent shall not be guilty of an offence under the provisions of any written law in force in Zambia prohibiting the preparation for reward of certain documents by persons not legally qualified, by reason only of the preparation by him of any document relating to patents for use in the Patent Office or required in any proceedings under this Act before the Registrar or the High Court.

(As amended by G.N. No. 185 of 1964
and Act No. 18 of 1980)

Qualification and registration of patent agents

68. (1) The Registrar shall keep a register of patent agents in which the name of every person, immediately upon his being accepted for registration, shall be registered, showing against his name such particulars as the Registrar shall from time to time deem necessary, and the Registrar shall enter in such register of patent agents all changes relating to registrations.

(2) Any person ordinarily resident in Zambia who—

- (a) has passed the prescribed examinations;
- (b) produces proof that he is a Fellow in good standing of the Chartered Institute of Patent Agents, incorporated by Royal Charter on the 11th August, 1891;

- (c) produces proof that he is a British Oversea Member in good standing of such Institute;
- (d) produces proof that he holds any qualification recognised by the Minister as being equivalent to the qualifications required for the purposes of paragraph (a), (b) or (c); or
- (e) is a legal practitioner and satisfies the Registrar that prior to the commencement of this Act he has, within Zambia, performed the functions of a patent agent as set out in section *sixty-seven* and has publicly described himself as a patent agent in Zambia;

may make application to the Registrar in the prescribed manner to be registered as a patent agent, and the Registrar shall arrange such registration if he is satisfied that there is no good reason why it should not be arranged and that the applicant is not a person whose name could be removed from the register of patent agents under paragraph (b), (c) or (f) of subsection (1) of section *sixty-nine*:

Provided that a public officer who has been employed in the Patent Office shall not be registered as a patent agent or be permitted to practise as such until at least twelve months have expired since he ceased to be so employed.

(3) An appeal shall lie from any decision of the Registrar made under the provisions of subsection (2).

*(As amended by No. 36 of 1960, G.N. No. 185 of 1964
and S.I. No. 175 of 1965)*

69. (1) The Registrar may remove from the register of patent agents the name of any patent agent upon proof to his satisfaction that such patent agent—

Removal of
names from
register of
patent agents

- (a) has died;
 - (b) has become of unsound mind;
 - (c) has been adjudged or otherwise declared bankrupt under any written law or enactment in force in Zambia, or has made an assignment to or composition with his creditors;
 - (d) has ceased to reside in Zambia, or has ceased to maintain a place of business therein;
 - (e) has applied for his name to be so removed;
 - (f) has, after being convicted, in Zambia or elsewhere, of the crime of theft, fraud, forgery or uttering a forged document or perjury, been sentenced to serve a term of imprisonment without the option of a fine, whether such sentence is suspended or not, and has not received a free pardon;
 - (g) having been entitled to practise as a legal practitioner, or to be registered as a patent agent, has ceased to be so entitled;
- or

- (h) having been entitled to practise as a legal practitioner, or a patent agent, has ceased to practise as such.

An appeal shall lie from any decision of the Registrar made under the provisions of this subsection.

(2) Subject to the provisions of this section and such procedure as may be prescribed, the High Court may order the Registrar to remove the name of any patent agent from the register of patent agents or may suspend any patent agent from practising as such for such time as it thinks fit if it is satisfied, after due inquiry, that such person has been guilty of conduct discreditable to a patent agent or has been guilty of a breach of any regulations prescribed for the conduct of patent agents.

(3) *Repealed by Act No. 18 of 1980.*

(4) Any institute or other organisation recognised by the Minister as being representative of the patent agents in Zambia shall be entitled to be represented, to adduce evidence and to be heard by the High Court before it makes any order in terms of subsection (2).

(5) Where the name of any patent agent has been removed from the register of patent agents under the provisions of subsection (1) or (2), his name shall not be restored to that register except by direction of the High Court, which may further direct that such restoration shall be made either without fee or on payment of such fee, not exceeding the registration fee, as it may fix, and the Registrar shall restore the name accordingly.

*(As amended by No. 1 of 1962
and G.N. No. 185 of 1964)*

Privileges of
legal practi-
tioners

70. Every person entitled to practise as a legal practitioner in Zambia may practise as a patent agent and perform the functions set out in section *sixty-seven* without being registered as a patent agent, but no such person shall be entitled to be so registered except under the provisions of section *sixty-eight*.

(As amended by G.N. No. 185 of 1964)

Entitlement to
practise as
patent agent

71. (1) No person shall practise as a patent agent unless he is registered as such or is, by virtue of section *seventy*, entitled so to practise.

(2) A person shall be deemed to practise as a patent agent if he performs any of the functions of a patent agent set out in section *sixty-seven* or if he carries on within Zambia the business of applying for or obtaining for others patents in Zambia or elsewhere.

(3) No person who is not a legal practitioner or registered as a patent agent shall describe himself as, or hold himself out to be, a patent agent or any term implying such a meaning, nor shall he permit himself to be so described or held out.

(4) Any person who contravenes the provisions of this section shall be guilty of an offence.

(As amended by G.N. No. 185 of 1964)

72. (1) No patent agent shall have an interest either as a partner or manager or otherwise in more than one firm of patent agents in Zambia.

Prohibition of certain acts by patent agents

(2) No patent agent shall practise under a name or title which includes the name of any person who is not or was not—

- (a) in his lifetime ordinarily resident in Zambia; or
- (b) registered as a patent agent under the provisions of this Act.

(3) No person shall practise as a patent agent if he is a party to—

- (a) a contract of partnership; or
- (b) an arrangement providing for the sharing or paying over of any professional fees;

relating to the business of a patent agent with any person who is prohibited from practising as a patent agent.

(4) Any person who contravenes the provisions of this section shall be guilty of an offence.

(No. 1 of 1962 as amended by G.N. No. 185 of 1964)

PART XI

APPEALS

73. Where this Act provides for appeals from decisions of the Registrar, all such appeals shall be made to the High Court in accordance with the provisions of this Part.

Appeals from Registrar

74. *Repealed by Act No. 18 of 1980.*

75. *Repealed by Act No. 18 of 1980.*

76. *Repealed by Act No. 18 of 1980.*

77. *Repealed by Act No. 18 of 1980.*

78. (1) Any party to proceedings before the High Court may appeal in accordance with rules made under this Part from any order or decision of that court to the Supreme Court.

Appeals to Supreme Court

(2) Upon the hearing of an appeal under the provisions of this section, the Supreme Court may, without prejudice to its other powers—

- (a) confirm, set aside or vary the order or decision in question;

- (b) remit the proceedings to the High Court with such instructions for further consideration, report, proceedings or evidence as the Supreme Court may think fit to give;
- (c) exercise any of the powers which could have been exercised by the High Court in the proceedings in connection with which the appeal is brought;
- (d) make such order it may think just as to the costs of the appeal or of earlier proceedings in the matter before the High Court.

*(As amended by G.N. No. 185 of 1964
and Act No. 18 of 1980)*

79. *Repealed by Act No. 18 of 1980.*

Time for
appeals

80. (1) Appeals under this Part, whether from decisions of the Registrar or orders or decisions of the High Court shall be brought within three months after the date of the decision or order in question, or within such further time as the High Court or the Supreme Court to which the appeal is brought may allow upon application by the appellant concerned.

(2) The powers of the Registrar as to extensions of time under subsection (2) of section *sixty-four* shall not apply in relation to times for bringing appeals under this Part.

(As amended by Act No. 18 of 1980)

Rules of court

81. The Chief Justice may, by statutory instrument, make rules regulating the practice and procedure relating to appeals or references to the High Court or the Supreme Court, as the case may be, as to—

- (a) the time within which any requirement of the rules is to be complied with;
- (b) the costs and expenses of and incidental to any proceedings;
- (c) the fees to be charged in respect of such proceedings; and
- (d) the summary determination of any appeal which appears to the High Court or Supreme Court, as the case may be, to be frivolous or vexatious or to be brought for the purpose of delay.

(As amended by Act No. 18 of 1980)

References to
High Court by
Registrar

82. Where any matter to be decided by the Registrar under this Act appears to him to involve a point of law or to be of unusual importance or complexity, he may, after giving notice to the parties, refer such matter to the High Court for a decision and shall, thereafter, in relation to such matter, act in accordance with the decision of that court or any decision substituted therefor on appeal to the Supreme Court.

(As amended by Act No. 18 of 1980)

PART XII

OFFENCES AND PENALTIES

83. If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy 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 an offence.

Falsification of certain documents

84. (1) Any person who—

- (a) for the purpose of deceiving the Registrar or any other officer of the Patent Office in the execution of the provisions of this Act; or
- (b) for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder;

Deceiving or influencing the Registrar or an officer

makes or submits a false statement or representation, whether orally or in writing, knowing the same to be false, shall be guilty of an offence.

(2) Any person who, having innocently made a false statement or representation, whether orally or in writing, for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder and who, on becoming aware that such statement or representation was false, fails to advise the Registrar forthwith of such falsity, shall be guilty of an offence.

(No. 12 of 1959)

85. Any person who, after having been sworn, or having in lieu thereof made an affirmation or declaration, wilfully gives false evidence before the Registrar High Court concerning the subject-matter of the proceeding in question, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence.

Witness giving false evidence

(As amended by Act No. 18 of 1980)

86. (1) Any officer of the Patent Office who buys, sells, acquires, or traffics in any invention or patent or any right under a patent shall be guilty of an offence.

Prohibition on trafficking in patents by officers in Patent Office

(2) Every purchase, sale or acquisition, and every assignment of any invention or patent, by or to any such officer shall be null and void.

(3) Nothing in this section contained shall apply to the inventor or to any acquisition by bequest or devolution in law.

Unauthorised
claim of
patent right

87. If any person falsely represents that any article sold by him is a patented article, he shall be guilty of an offence, and for the purposes of this provision a person who sells an article having stamped, engraved or embossed thereon or otherwise applied thereto the word "patent" or "patented" or any other word expressing or implying that the article is patented, shall be deemed to represent that the article is a patented article.

Unauthorised
use of certain
words

88. If any person other than a person appointed in terms of section *four* uses on his place of business, or on any document issued by him, or otherwise, the words "Patent Office", or any other words suggesting that his place of business is, or is officially connected with, the Patent Office, he shall be guilty of an offence.

Penalties

89. Any person who is guilty of an offence under this Act shall be liable to a fine not exceeding fifteen thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

(As amended by Act No. 13 of 1994)

PART XIII

MISCELLANEOUS

Lodging and
authentication
of documents

90. (1) Any application, notice or document authorised or required under this Act to be lodged, made or given at the Patent Office, or to the Registrar or any other person, may be delivered by hand or sent by registered post.

(2) No authentication shall be required in respect of any document lodged in the Patent Office under the provisions of this Act and used in proceedings before the Registrar.

(As amended by Act No. 18 of 1980)

Oaths and
affirmations

91. Any person who is required under the provisions of this Act to take any oath or swear to the truth of any affidavit may, in lieu thereof, make an affirmation or declaration in accordance with the written law relating to affirmations or declarations in Zambia.

(As amended by G.N. No. 185 of 1964)

Expenses of
administration

92. All moneys necessary for the purposes of this Act shall be paid out of moneys appropriated for the purpose by Parliament.

*(As amended by G.N. No. 185 of 1964
and S.I. No. 175 of 1965)*

Provisions as
to fees

93. (1) Where under the provisions of this Act—

(a) a fee is payable in respect of the performance of any act by the Registrar, the Registrar shall not perform that act until the fee has been paid;

- (b) a fee is payable in respect of the doing of any act by any person other than the Registrar, the act shall be deemed not to have been done until the fee has been paid; or
- (c) a fee is payable in respect of the lodging of a document, the document shall be deemed not to have been lodged until the fee has been paid.

(2) All fees shall be paid at the Patent Office in such manner as the Registrar, with the approval of the Minister, may accept.

94. Nothing in this Act shall affect the right of the State or of any person deriving title directly or indirectly from the State to sell or use articles forfeited under the provisions of any written law in force in Zambia.

Saving for
certain
forfeitures

*(As amended by G.N. No. 185 of 1964
and S.I. No. 175 of 1965)*

95. (1) The Minister may, when he deems fit, direct the publication by the Registrar of a journal, to be referred to as the Patent Journal, containing particulars of applications for patents and other proceedings or matters arising under the provisions of this Act, together with such reports of cases and other relevant matters as the Minister may deem fit.

Patent Journal

(2) The Registrar shall make provision for selling copies of the Patent Journal at such price and in such manner as the Minister may direct.

96. (1) The Minister may, by statutory instrument, make regulations prescribing anything which under this Act is to be prescribed and generally for the better carrying out of the objects and purposes of this Act or to give force or effect to its provisions or for its better administration.

Regulations

(2) Without derogation from the generality of the provisions of subsection (1), regulations made by the Minister may provide for—

- (a) the form of applications for patents and of any specifications, drawings or other documents which may be lodged at the Patent Office, and the furnishing of copies of any such documents;
- (b) the procedure to be followed in connection with any application or request to the Registrar, or any proceeding before him, and the authorising of the rectification of irregularities of procedure;
- (c) the service of notices and other documents required to be served in connection with proceedings under this Act;
- (d) examinations for the qualification of patent agents in terms of this Act, the recognition for such purpose of qualifica-

- tions obtained either in or outside Zambia, and the fees to be paid in connection with the registration of patent agents;
- (e) the conduct of the business of the Patent Office;
 - (f) other fees payable under this Act, and fees which may be charged in relation to the conduct of patent business by patent agents and legal practitioners performing the functions of patent agents;
 - (g) authorising the publication and the sale of copies of specifications, drawings and other documents in the Patent Office, and of indexes to and abridgements of such documents;
 - (h) the professional conduct of patent agents.

(As amended by G.N. No. 185 of 1964)

PART XIV

APPLICATION AND TRANSITIONAL PROVISIONS

Application of
Act

97. Save as is otherwise provided in this Act, the provisions of this Act shall, so far as they are applicable, apply in relation to—

- (a) any patent granted or registered under the Registration of United Kingdom Patents Act, Chapter 205 of the 1957 Edition of the Laws, or the Patents (Southern Rhodesia) Act, Chapter 208 of the 1948 Edition of the Laws (hereinafter in this section referred to as “such legislation”); and
- (b) any application in respect of a patent made under such legislation:

Provided that a patent referred to in this section shall not be liable to revocation except upon some ground upon which it would have been liable to revocation in terms of such legislation.

(No. 12 of 1959 as amended by G.N. No. 185 of 1964)