



Patents and Designs Act 1907

1907 CHAPTER 29

PART III

GENERAL

Patent Office and Proceedings thereat

62 Patent Office

- (1) The Treasury may continue to provide for the purposes of this Act and the Trade Marks Act, 1905, an office with all requisite buildings and conveniences, which shall be called, and is in this Act referred to as, the Patent Office.
- (2) The Patent Office shall be under the immediate control of the comptroller, who shall act under the superintendence and direction of the Board of Trade.
- (3) Any act or thing directed to be done by or to the comptroller may be done by or to any officer authorised by the Board of Trade.
- (4) Rules under this Act may provide for the establishment of branch offices for designs at Manchester or elsewhere, and for any document or thing, required by this Act to be sent to or done at the Patent Office, being sent to or done at any branch office which may be established.

63 Officers and clerks

- (1) There shall continue to be a comptroller-general of patents, designs, and trade marks, and the Board of Trade may, subject to the approval of the Treasury, appoint the comptroller, and so many examiners and other officers and clerks, with such designations and duties as the Board of Trade think fit, and may remove any of those officers and clerks.
- (2) The salaries of those officers and clerks shall be appointed by the Board of Trade, with the concurrence of the Treasury, and those salaries and the other expenses of the

execution of this Act and the Trade Marks Act, 1905, shall continue to be paid out of money provided by Parliament.

64 Seal of Patent Office

Impressions of the seal of the Patent Office shall be judicially noticed and admitted in evidence.

Fees

65 Fees

There shall be paid in respect of the grant of patents and the registration of designs, and applications therefor, and in respect of other matters with relation to patents and designs under this Act, such fees as may be, with the sanction of the Treasury, prescribed by the Board of Trade, so however that the fees prescribed in respect of the instruments and matters mentioned in the First Schedule to this Act shall not exceed those specified in that Schedule.

Provisions as to Registers' and other Documents in Patent Office

66 Trust not to be entered in registers

There shall not be entered in any register kept under this Act, or be receivable by the comptroller, any notice of any trust expressed, implied or constructive.

67 Inspection of and extracts from registers

Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to the provisions of this Act and to such regulations as may be prescribed ; and certified copies, sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

68 Privilege of reports of examiners

Reports of examiners made under this Act shall not in any case be published or be open to public inspection, and shall not be liable to production or inspection in any legal proceeding, unless the court or officer having power to order discovery in such legal proceeding certifies that such production or inspection is desirable in the interests of justice, and ought to be allowed.

69 Prohibition of publication of specification, drawings, &c where application abandoned, &c

- (1) Where an application for a patent has been abandoned, or become void, the specifications and drawings (if any) accompanying or left in connexion with such application shall not, save as otherwise expressly provided by this Act, at any time be open to public inspection or be published by the comptroller.

- (2) Where an application for a design has been abandoned or refused the application and any drawings, photographs, tracings, representations, or specimens left in connexion with the application shall not at any time be open to public inspection or be published by the comptroller.

70 Power for comptroller to correct clerical errors

The comptroller may, on request in writing accompanied by the prescribed fee,—

- (a) correct any clerical error in or in connexion with an application for a patent or in any patent or any specification ;
- (b) cancel the registration of a design either wholly or in respect of any particular goods in connexion with which the design is registered ;
- (c) correct any clerical error in the representation of a design or in the name or address of the proprietor of any patent or design, or in any other matter which is entered upon the register of patents or the register of designs.

71 Entry of assignments and transmissions in registers

- (1) Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, or to the copyright in a registered design, the comptroller shall, on request and on proof of title to his satisfaction, register him as the proprietor of a patent or design.
- (2) Where any person becomes entitled as mortgagee, licensee, or otherwise to any interest in a patent or design, the comptroller shall, on request and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the register of patents or designs, as the case may be.
- (3) The person registered as the proprietor of a patent or design shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise deal with, the patent or design and to give effectual receipts for any consideration for any such assignment, licence, or dealing : Provided that any equities in respect of the patent or design may be enforced in like manner as in respect of any other personal property.

72 Rectification of registers by court

- (1) The court may, on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of patents or designs of any entry, or by any entry made in either such register without sufficient cause, or by any entry wrongly remaining on either such register, or by an error or defect in any entry in either such register, make such order for making, expunging, or varying such entry as it may think fit.
- (2) The court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connexion with the rectification of a register.
- (3) The prescribed notice of any application under this section shall be given to the comptroller, who shall have the right to appear and be heard thereon, and shall appear if so directed by the court.

- (4) Any order of the court rectifying a register shall direct that notice of the rectification be served on the comptroller in the prescribed manner, who shall upon the receipt of such notice rectify the register accordingly.

Powers and Duties of Comptroller

73 Exercise of discretionary power by comptroller

Where any discretionary power is by or under this Act given to the comptroller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of a specification, or for registration of a design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard.

74 Power of comptroller to take directions of law officers

The comptroller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to a law officer for directions in the matter.

75 Refusal to grant patent, &c. in certain cases

The comptroller may refuse to grant a patent for an invention, or to register a design, of which the use would, in his opinion, be contrary to law or morality.

76 Annual reports of comptroller

The comptroller shall, before the first day of June in every year, cause a report respecting the execution by or under him of this Act to be laid before both Houses of Parliament, and therein shall include for the year to which the report relates all general rules made in that year under or for the purposes of this Act, and an account of all fees, salaries, and allowances, and other money received and paid under this Act.

Evidence, &c

77 Evidence before comptroller

- (1) Subject to rules under this Act, in any proceeding under this Act before the comptroller, the evidence shall be given by statutory declaration in the absence of directions to the contrary; but, in any case in which the comptroller thinks it right so to do, he may take evidence viva, voce in lieu of or in addition to evidence by declaration or allow any declarant to be cross-examined on his declaration. Any such statutory declaration may in the case of appeal be used before the court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.
- (2) In case any part of the evidence is taken viva voce, the comptroller shall, in respect of requiring the attendance of witnesses and taking evidence on oath, be in the same position in all respects as an official referee of the Supreme Court.

78 Certificate of comptroller to be evidence

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

79 Evidence of documents in Patent Office

Printed or written copies or extracts, purporting to be certified by the comptroller and sealed with the seal of the Patent Office, of or from patents, specifications, and other documents in the Patent Office, and of or from registers and other books kept there, shall be admitted in evidence in all courts in His Majesty's dominions, and in all proceedings, without further proof or production of the originals.

80 Transmission of certified printed copies of specifications, &c

- (1) Copies of all specifications, drawings, and amendments left at the Patent Office after the commencement of this Act, printed for and sealed with the seal of the Patent Office shall be transmitted to the Edinburgh Museum of Science and Art, and to the Enrolments Office of the Chancery Division in Ireland, and to the Rolls Office in the Isle of Man, within twenty-one days after they have been accepted or allowed at the Patent Office.
- (2) Certified copies of or extracts from any such documents and of any documents so transmitted in pursuance of any enactment repealed by this Act shall be given to any person on payment of the prescribed fee ; and any such copy or extract shall be admitted in evidence in all courts in Scotland and Ireland and in the Isle of Man without further proof or production of the originals.

81 Applications and notices by post

Any application, notice, or other document authorised or required to be left, made or given at the Patent Office or to the comptroller, or to any other person under this Act, may be sent by post.

82 Excluded days

Where the last day fixed by this Act for doing anything under this Act falls on any day specified in rules under this Act as an excluded day, the rules may provide for the thing being done on the next following day not being an excluded day.

83 Declaration by infant, lunatic, &c

- (1) If any person is, by reason of infancy, lunacy, or other disability, incapable of making any declaration or doing anything required or permitted by or under this Act, the guardian or committee (if any) of the person subject to the disability, or, if there be none, any person appointed by any court possessing jurisdiction in respect of his property, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the person subject to the disability.

- (2) An appointment may be made by the court for the purposes of this section, upon the petition of any person acting on behalf of the person subject to the disability, or of any other person interested in the making of the declaration or the doing of the thing.

Register of Patent Agents

84 Register of patent agents

- (1) A person shall not be entitled to describe himself as a patent agent, whether by advertisement, by description on his place of business, by any document issued by him, or otherwise, unless he is registered as a patent agent in pursuance of this Act or an Act repealed by this Act.
- (2) Every person who proves to the satisfaction of the Board of Trade that prior to the twenty-fourth day of December, one thousand eight hundred and eighty-eight, he had been bona fide practising as a patent agent shall be entitled to be registered as a patent agent in pursuance of this Act.
- (3) If any person knowingly describes himself as a patent agent in contravention of this section he shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding twenty pounds.
- (4) In this section " patent agent " means exclusively an agent for obtaining patents in the United Kingdom.

85 Agents for patents

- (1) Rules under this Act may authorise the comptroller to refuse to recognise as agent in respect of any business under this Act any person whose name has been erased from the register of patent agents, or who is proved to the satisfaction of the Board of Trade, after being given an opportunity of being heard, to have been convicted of such an offence or to have been guilty of such misconduct as would have rendered him liable, if his name had been on the register of patent agents, to have his name erased therefrom, and may authorise the comptroller to refuse to recognise as agent in respect of any business under this Act any company which, if it had been an individual, the comptroller could refuse to recognise as such agent.
- (2) Where a company or firm acts as agents, such rules as aforesaid may authorise the comptroller to refuse to recognise the company or firm as agent, if any person whom the comptroller could refuse to recognise as an agent acts as director or manager of the company or is a partner in the firm.
- (3) The comptroller shall refuse to recognise as agent in respect of any business under this Act any person who neither resides nor has a place of business in the United Kingdom or the Isle of Man.

Powers, &c., of Board of Trade

86 Power for Board of Trade to make general rules

- (1) The Board of Trade may make such general rules and do such things as they think expedient, subject to the provisions of this Act—

- (a) For regulating the practice of registration under this Act:
 - (b) For classifying goods for the purposes of designs :
 - (c) For making or requiring duplicates of specifications, drawings, and other documents :
 - (d) For securing and regulating the publishing and selling of copies, at such prices and in such manner as the Board of Trade think fit, of specifications, drawings, and other documents :
 - (e) For securing and regulating the making, printing, publishing, and selling of indexes to, and abridgments of, specifications and other documents in the Patent Office; and providing for the inspection of indexes and abridgments and other documents :
 - (f) For regulating (with the approval of the Treasury) the presentation of copies of Patent Office publications to patentees and to public authorities, bodies, and institutions at home and abroad :
 - (g) For regulating the keeping of the register of patent agents under this Act :
 - (h) Generally for regulating the business of the Patent Office, and all things by this Act placed under the direction or control of the comptroller, or of the Board of Trade.
- (2) General rules shall whilst in force be of the same effect as if they were contained in this Act.
- (3) Any rules made in pursuance of this section shall be advertised twice in the official journal to be issued by the comptroller, and shall be laid before both Houses of Parliament as soon as practicable after they are made, and if either House of Parliament, within the next forty days after any rules have been so laid before that House, resolves that the rules or any of them ought to be annulled, the rules or those to which the resolution applies shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under the rules or to the making of any new rules.

87 Proceedings of the Board of Trade

- (1) All things required or authorised under this Act to be done by, to, or before the Board of Trade, may be done by, to, or before the President or a secretary or an assistant secretary of the Board.
- (2) All documents purporting to be orders made by the Board of Trade, and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or by any person authorised in that behalf by the President of the Board, shall be received in evidence, and shall be deemed to be such orders without further proof, unless the contrary is shown.
- (3) A certificate, signed by the President of the Board of Trade, that any order made or act done is the order or act of the Board, shall be conclusive evidence of the fact so certified.

88 Provision as to Order in Council

An Order in Council under this Act shall, from a date to be mentioned for the purpose in the Order, take effect as if it had been contained in this Act; but may be revoked or varied by a subsequent Order.

Offences

89 Offences

- (1) 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 a misdemeanor.
- (2) If any person falsely represents that any article sold by him is a patented article, or falsely describes any design applied to any article sold by him as registered, he shall be liable for every offence, on conviction under the Summary Jurisdiction Acts, to a fine not exceeding five pounds.
- (3) If any person sells an article having stamped, engraved, or impressed thereon or otherwise applied thereto the word "patent," "patented," "registered," or any other word expressing or implying that the article is patented or that the design applied thereto is registered, he shall be deemed for the purposes of this section to represent that the article is a patented article or that the design applied thereto is a registered design.
- (4) Any person who, after the copyright in a design has expired, puts or causes to be put on any article to which the design has been applied the word "registered," or any word or words implying that there is a subsisting copyright in the design, shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds.
- (5) If any person 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 officially connected with, or is, the Patent Office, he shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding twenty pounds.

90 Unauthorised assumption of Royal Arms

- (1) The grant of a patent under this Act shall not be deemed to authorise the patentee to use the Royal Arms or to place the Royal Arms on any patented article.
- (2) If any person, without the authority of His Majesty, uses in connection with any business, trade, calling, or profession the Royal Arms (or arms so nearly resembling them as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised to use the Royal Arms, he shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding twenty pounds.

Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing such arms to continue to use such trade mark.

International and Colonial Arrangements

91 International and Colonial arrangements

- (1) If His Majesty is pleased to make any arrangement with the government of any foreign state for mutual protection of inventions, or designs, or trade marks, then any person who has applied for protection for any invention, design, or trade mark in that state shall be entitled to a patent for his invention or to registration of his design or trade

mark under this Act or the Trade Marks Act, 1905, in priority to other applicants; and the patent or registration shall have the same date as the date of the application in the foreign state.

Provided that—

- (a) The application is made in the case of a patent within twelve months, and in the case of a design or trade mark within four months, from the application for protection in the foreign state ; and
 - (b) Nothing in this section shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the actual date on which his complete specification is accepted, or his design or trade mark is registered, in this country.
- (2) The patent granted for the invention or the registration of a design or trade mark shall not be invalidated—
- (a) in the case of a patent, by reason only of the publication of a description of, or use of, the invention; or
 - (b) in the case of a design, by reason only of the exhibition or use of, or the publication of a description or representation of, the design ; or
 - (c) in the case of a trade mark, by reason only of the use of the trade mark, in the United Kingdom or the Isle of Man during the period specified in this section as that within which the application may be made.
- (3) The application for the grant of a patent, or the registration of a design, or the registration of a trade mark under this section, must be made in the same manner as an ordinary application under this Act or the Trade Marks Act, 1905 :

Provided that—

- (a) In the case of patents the application shall be accompanied by a complete specification, which, if it is not accepted within the twelve months from the application for protection in the foreign state, shall with the drawings (if any) be open to public inspection at the expiration of that period ; and
 - (b) In the case of trade marks, any trade mark the registration of which has been duly applied for in the country of origin may be registered under the Trade Marks Act, 1905.
- (4) The provisions of this section shall apply only in the case of those foreign states with respect to which His Majesty by Order in Council declares them to be applicable, and so long only in the case of each state as the Order in Council continues in force with respect to that state.
- (5) Where it is made to appear to His Majesty that the legislature of any British possession has made satisfactory provision for the protection of inventions, designs, and trade marks, patented or registered in this country, it shall be lawful for His Majesty, by Order in Council, to apply the provisions of this section to that possession, with such variations or additions, if any, as may be stated in the Order.

Definitions

92 Provisions as to "the court"

- (1) In this Act, unless the context otherwise requires, " the court" means, subject to the provisions as to Scotland, Ireland, and the Isle of Man, the High Court in England.

- (2) Where by virtue of this Act a decision of the comptroller is subject to an appeal to the court, or a petition may be referred or presented to the court, the appeal shall, subject to and in accordance with rules of the Supreme Court, be made and the petition referred or presented to such judge of the High Court as the Lord Chancellor may select for the purpose, and the decision of that judge shall be final, except in the case of an appeal from a decision of the comptroller revoking a patent on any ground on which the grant of such patent might have been opposed.

93 Definitions

In this Act, unless the context otherwise requires,—

" Law officer " means the Attorney-General or Solicitor-General for England :

" Prescribed " means prescribed by general rules under this Act:

" British possession " does not include the Isle of Man or the Channel Islands:

" Patent " means letters patent for an invention :

" Patentee " means the person for the time being entitled to the benefit of a patent :

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

" Inventor " and " applicant " shall, subject to the provisions of this Act, include the legal representative of a deceased inventor or applicant:

" Design " means any design (not being a design for a sculpture or other thing within the protection of the Sculpture Copyright Act, 1814) applicable to any article, whether the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined:

" Article " means (as respects designs) any article of manufacture and any substance artificial or natural, or partly artificial and partly natural:

" Copyright " means the exclusive right to apply a design to any article in any class in which the design is registered :

" Proprietor of a new and original design, "—

- (a) Where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed ; and
- (b) Where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired 5-and
- (c) In any other case, means the author of the design;

and where the property in, or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person.

Application to Scotland, Ireland, and the Isle of Man

94 Application to Scotland

In the application of this Act to Scotland—

- (1) In any action for infringement of a patent in Scotland the provisions of this Act with respect to calling in the aid of an assessor shall apply, and the action shall be tried without a jury, unless the court otherwise direct, but otherwise nothing shall affect the jurisdiction and forms of process of the courts in Scotland in such an action or in any action or proceeding respecting a patent hitherto competent to those courts; and for the purposes of the provisions so applied " court of appeal " shall mean any court to which such action is appealed :
- (2) Any offence under this Act declared to be punishable on conviction under the Summary Jurisdiction Acts may be prosecuted in the sheriff court :
- (3) Proceedings for revocation of a patent shall be in the form of an action of reduction at the instance of the Lord Advocate, or at the instance of a party having interest with his concurrence, which concurrence may be given on just cause shown only, and service of all writs and summonses in that action shall be made according to the forms and practice existing at the commencement of this Act :
- (4) The provisions of this Act, conferring a special jurisdiction on the court as defined by this Act, shall not, except so far as the jurisdiction extends, affect the jurisdiction of any court in Scotland in any proceedings relating to patents or to designs; and with reference to any such proceedings, the term " the Court " shall mean any Lord Ordinary of the Court of Session, and the term " Court of Appeal " shall mean either Division of that Court:
- (5) Notwithstanding anything in this Act, the expression " the court " shall, as respects petitions for compulsory licences or revocation which are referred by the Board of Trade to the Court in Scotland, mean any Lord Ordinary of the Court of Session, and shall in reference to proceedings in Scotland for the extension of the term of a patent mean such Lord Ordinary :
- (6) The expression " Rules of the Supreme Court " shall, except in section ninety-two of this Act, mean Act of sederunt:
- (7) If any rectification of a register under this Act is required in pursuance of any proceeding in a court, a copy of the order, decree, or other authority for the rectification, shall be served on the comptroller, and he shall rectify the register accordingly :
- (8) The expression "injunction " means "interdict."

95 Application to Ireland

In the application of this Act to Ireland—

- (1) All parties shall, notwithstanding anything in this Act, have in Ireland their remedies under or in respect of a patent as if the same had been granted to extend to Ireland only :
- (2) The provisions of this Act conferring a special jurisdiction on the court, as defined by this Act, shall not, except so far as the jurisdiction extends, affect the jurisdiction of any

court in Ireland in any proceedings relating to patents or to designs; and with reference to any such proceedings the term " the Court " means the High Court in Ireland :

- (3) If any rectification of a register under this Act is required in pursuance of any proceeding in a court, a copy of the order, decree, or other authority for the rectification shall be served on the comptroller, and he shall rectify the register accordingly.

96 Isle of Man

This Act shall extend to the Isle of Man, subject to the following modifications :—

- (1) Nothing in this Act shall affect the jurisdiction of the courts in the Isle of Man in proceedings for infringement, or in any action or proceeding respecting a patent or design competent to those courts :
- (2) The punishment for a misdemeanor under this Act in the Isle of Man shall be imprisonment for any term not exceeding two years, with or without hard labour, and with or without a fine not exceeding one hundred pounds, at the discretion of the court:
- (3) Any offence under this Act committed in the Isle of Man which would in England be punishable on summary conviction may be prosecuted, and any fine in respect thereof recovered, at the instance of any person aggrieved, in the manner in which offences punishable on summary conviction may for the time being be prosecuted.

Repeal, Savings, and Short Title

97 Saving for prerogative

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

98 Repeal and savings

- (1) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule—
- (a) As respects the enactments mentioned in Part I. of that Schedule, as from the commencement of this Act;
- (b) As respects the enactments mentioned in Part II. of that Schedule, as from the date when rules of the Supreme Court regulating the matters dealt with in those enactments come into operation ;
- (c) As respects the enactments mentioned in Part III. of that schedule, as from the date when rules under this Act regulating the matters dealt with in those enactments come into operation;

and the enactments mentioned in Part II. and Part III. of that Schedule shall, until so repealed, have effect as if they formed part of this Act :

Provided that this repeal shall not affect any convention, Order in Council, rule or table of fees having effect under any enactment so repealed, but any such convention, Order in Council, rule or table of fees in force at the commencement of this Act shall continue in force, and may be repealed, altered or amended, as if it had been made under this Act.

- (2) Except where otherwise expressly provided, this Act shall extend to all patents granted and all designs registered before the commencement of this Act, and to applications then pending, in substitution for such enactments as would have applied thereto if this Act had not been passed.

99 Short title and commencement

This Act may be cited as the Patents and Designs Act, 1907, and shall, save as otherwise expressly provided, come into operation on the first day of January one thousand nine hundred and eight.