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INTERNATIONAL UNION

Arrangement of Nice

concerning the International Classification of Goods and Services to which Trade Marks apply, of 15th June, 1957

Adhesion of the Netherlands and Switzerland

(20th July, 1962)

The following communication has been received from the Swiss Federal Political Department:

(Translation)

“In compliance with the instructions dated 20th July, 1962 by the Swiss Federal Political Department and in application of Article 6 (3) of the Arrangement concerning the International Classification of Goods and Services to which Trade Marks apply, signed at Nice on 15th June, 1957, the Swiss Embassy has the honour to inform the Ministry of Foreign Affairs that the Netherlands and Switzerland have adhered to the above-mentioned arrangement.

The adhesion of the Netherlands was notified to the Government of the Swiss Confederation in a note from the Dutch Embassy in Berne, dated 21st May, 1962.

In application of Article 16 of the Convention of Paris for the Protection of Industrial Property to which Article 6 (3) of the Arrangement of Nice refers, these adhesions take effect one month after the date of dispatch of the instruction issued by the Political Department, that is to say, the 20th August, 1962.”

LEGISLATION

AUSTRALIA

Patents Act 1952-1960

*(Part Four)**

Assignment of invention to Commonwealth

130. — (1) The inventor of an invention, or a person who has acquired from an inventor the right to apply for a patent in respect of an invention, may assign the invention and the patent obtained, or to be obtained for the invention to the Commonwealth.

(2) The assignment and all covenants and agreements contained in the assignment are valid and effectual notwith-

standing any want of valuable consideration and may be enforced by action or other appropriate proceeding in the name of the Attorney-General.

Prohibition of publication of information with respect to inventions

131. — (1) Subject to any directions of the Attorney-General, the Commissioner may, if it appears to him to be necessary or expedient so to do in the interests of the defence of the Commonwealth, by order in writing under his hand, prohibit or restrict the publication of information with respect to the subject-matter of an application made for the grant of a patent, whether generally or to a particular person or to the persons included in a class of persons.

(2) A person shall not, except in accordance with the written consent of the Commissioner, publish or communicate information in contravention of an order made under the last preceding sub-section.

Penalty:

- (a) if the offence is prosecuted summarily—a fine not exceeding Two hundred and fifty pounds or imprisonment for a term not exceeding six months, or both; or
- (b) if the offence is prosecuted upon indictment — a fine not exceeding Five thousand pounds or imprisonment for a term not exceeding two years, or both.

(3) Where an order is in force under this section in relation to an application, the application may proceed up to the acceptance of the application and complete specification, but the complete specification shall not be published, the acceptance shall not be advertised and a patent shall not be granted on the application.

(4) Where an order under this section has been revoked after the acceptance of the application and complete specification, the acceptance shall be advertised within one month after the date of revocation of the order.

(5) Nothing in this Act prevents the disclosure of information concerning an invention to a Department or authority of the Commonwealth for the purpose of obtaining advice as to whether an order under this section should be made, amended or revoked.

Interpretation

132. — In this Part, references to the Commonwealth include references to an authority of the Commonwealth and references to a State include references to an authority of the State.

Part XV. Patent Attorneys

Registration of patent attorneys

133. — (1) There shall be kept at the Patent Office a Register of Patent Attorneys.

(2) The Register of Patent Attorneys under the repealed Acts shall continue to be the Register of Patent Attorneys under this Act.

(3) The Commissioner shall register as a patent attorney a person who:

*) See *Industrial Property*, 1962, p. 112, 144, 162.

- (a) is a British subject;
- (b) is not less than twenty-one years of age;
- (c) has passed in all the subjects of the prescribed examination, or
 - (i) being a legal practitioner, has passed in such of the subjects of the prescribed examination as the regulations require to be passed by legal practitioners; or
 - (ii) being a person registered as a patent agent in the United Kingdom, has passed in such of the subjects of the prescribed examination as the regulations require to be passed by such persons;
- (d) possesses such other qualifications as are prescribed; and
- (e) has been employed as prescribed, for not less than the prescribed period, by a patent attorney.

Privileges

134. — (1) A patent attorney

- (a) is entitled to prepare all documents, transact all business and conduct all proceedings for the purposes of this Act; and
- (b) has such other rights and privileges as are prescribed.

(1A) A communication between a patent attorney and his client is privileged to the same extent as a communication between a solicitor and his client.

(2) Nothing in this section authorizes a patent attorney to prepare a document which is to be issued from or filed in a court or to transact business or conduct proceedings in a court.

Removal from register

135. — The name of a person registered as a patent attorney may be removed from the Register of Patent Attorneys in the prescribed manner and on the prescribed grounds.

Unregistered persons not to practise

136. — (1) Subject to section one hundred and thirty-eight of this Act:

- (a) a person shall not carry on business, practise or act as a patent attorney unless he is registered as a patent attorney or is a legal practitioner; or
- (b) the members of a partnership shall not carry on business, practise or act as patent attorneys unless each member of the partnership is so registered or is a legal practitioner.

Penalty: One hundred pounds.

(2) Subject to section one hundred and thirty-eight of this Act:

- (a) a person shall not describe himself or hold himself out, or permit himself to be described or held out, as a patent attorney, patent agent or agent for obtaining patents, unless he is registered as a patent attorney or is a legal practitioner who, within one year after the commencement of this Act, has satisfied the Commissioner that, at any time before the first day of January, One thousand nine hundred and fifty-two, he had practised as a patent attorney; or

- (b) the members of a partnership shall not describe themselves or hold themselves out, or permit themselves to be described or held out, as patent attorneys, patent agents or agents for obtaining patents, unless each member of the partnership is so registered or is such a legal practitioner.

Penalty: One hundred pounds.

(3) A company shall not carry on business, practise, act, describe itself or hold itself out, or permit itself to be described or held out, as a patent attorney, patent agent or agent for obtaining patents.

Penalty: One hundred pounds.

(4) A director, manager, secretary or other officer of a company which is guilty of an offence against the last preceding sub-section, who is knowingly a party to the offence, is guilty of an offence.

Penalty: One hundred pounds.

(5) For the purposes of this section, a person who, or a company which, undertakes for gain in Australia:

- (a) to apply for or obtain patents in Australia or elsewhere;
- (b) to prepare specifications or other documents for the purposes of this Act or of the patent law of another country; or
- (c) to give advice, other than of a scientific or technical nature, as to the validity of patents or their infringement, shall be deemed to carry on business as a patent attorney.

Legal practitioners not to prepare specifications, etc.

137. — A legal practitioner shall not prepare a specification or a document relating to an amendment of a specification, other than a document relating to an amendment directed under section eighty-six of this Act:

- (a) unless, within one year after the commencement of this Act, he has satisfied the Commissioner that, at any time before the first day of January, One thousand nine hundred and fifty-two, he had practised as a patent attorney; or
- (b) unless he is acting under the instruction of a patent attorney or of a legal practitioner who has satisfied the Commissioner as provided by the last preceding paragraph.

Penalty: One hundred pounds.

Carrying on business of deceased patent attorney

138. — It is not an offence against section one hundred and thirty-six of this Act if the legal representative of a deceased patent attorney carries on the business or practice of that deceased patent attorney for a period not exceeding three years from the death of the patent attorney, or, in the case of a patent attorney who died before the date of commencement of this Act, for a period of three years from that date, or, in either case, for such further period (if any) as the High Court allows, and is himself a patent attorney or person entitled to practice as a patent attorney, or employs a patent attorney, or person entitled to practice as a patent attorney, to manage that business or practice on his behalf.

Attendance at patent attorney's office

139. — A patent attorney shall not practice or act as a patent attorney, or hold himself out as so practising, at an office or place of business at which specifications or other documents are prepared for the purposes of this Act, unless that patent attorney, some other patent attorney, or some person entitled to practise as a patent attorney, is in regular attendance at, and in continuous charge of, that office or place.

Penalty: Fifty pounds.

Part XVI. International Arrangements*Convention countries*

140. — (1) The Governor-General may, with a view to the fulfilment of a treaty, convention, arrangement or engagement between the Commonwealth and another country, by Proclamation, declare that a country specified in the Proclamation is a Convention country for the purposes of this Act⁹.

(2) The Governor-General may, by Proclamation, declare a part of the Queen's dominions which has made satisfactory provisions for the protection in that part of inventions to be a Convention country for the purposes of this Act¹⁰.

(3) Where the Governor-General, by Proclamation¹¹, declares that an application for a patent or similar protection in respect of an invention:

(a) is, in accordance with the terms of a treaty subsisting between two or more Convention countries, equivalent to an application made in one of those Convention countries, the first mentioned application shall, for the purposes of this Act, be deemed to have been made in that Convention country; or

(b) is, in accordance with the law of a Convention country, equivalent to an application made in that Convention country, the first-mentioned application shall, for the purposes of this Act, be deemed to have been made in that Convention country.

Applications under International Conventions

141. — (1) Where an application for a patent or similar protection in respect of an invention (in this Part referred to as "the basic application") has been made in a Convention country and a person, being a person referred to in section thirty-four of this Act, who:

(a) is the applicant in the Convention country;

(b) is the assignee of the applicant in the Convention country;

(c) is the legal representative of the applicant in the Convention country or of his assignee; or

(d) has the consent of the applicant in the Convention country or of a person who is his assignee or legal representative,

makes an application, or two or more of such persons make a joint application, for a patent within twelve months after the date on which the basic application was made, the priority date of a claim of the complete specification, being a claim fairly based on matter disclosed in the basic application, is the date of making of the basic application.

(2) Where two or more applications have been made for a patent or similar protection in respect of the invention in one or more Convention countries, the period of twelve months referred to in the last preceding sub-section shall be reckoned from the date on which the earlier or earliest of those applications was made.

Multiple priorities

142. — (1) Where two or more applications for patents or similar protection in respect of inventions have been made in one or more Convention countries and those inventions are so related as to constitute one invention, one application may be made by a person referred to in sub-section (1) of the last preceding section, or by two or more of such persons jointly, within twelve months from the date on which the earlier or earliest of those applications was made, in respect of the inventions disclosed in the basic applications.

(2) The Examiner shall report whether those inventions are so related as to constitute one invention.

(3) If the Commissioner is of opinion that the inventions are so related as to constitute one invention, he may accept the application and grant one patent on the application.

(4) The priority date of a claim of the complete specification, being a claim fairly based on matter disclosed in one or more of the basic applications, is the date on which that matter was first so disclosed.

(5) An appeal lies to the Appeal Tribunal from a decision of the Commissioner under this section.

Withdrawn application not to be used as basic application in certain circumstances

142AA. — Notwithstanding anything contained in either of the last two preceding sections, where:

(a) an application has been made for a patent or similar protection in respect of an invention in a Convention country;

(b) the application has been withdrawn, abandoned or refused without becoming open to public inspection;

(c) the application has not been used as the basis for claiming a right of priority in a Convention country under the law of that country corresponding to this Part; and

(d) a later application has been made by the same applicant for a patent or similar protection in respect of that invention in the Convention country in which the earlier application was made,

⁹ The Governor-General, by Proclamations dated 20th April, 1954 and 24th July, 1958, declared certain specified countries to be convention countries. See *Commonwealth Gazette* 1954, p. 1237, and Vol. V of Commonwealth Statutory Rules 1901-1956, p. 5466; and *Commonwealth Gazette* 1958, p. 2515, and Commonwealth Statutory Rules 1958, p. 530.

¹⁰ The Governor-General, by Proclamation dated 20th April, 1954, declared Pakistan to be a convention country. See *Commonwealth Gazette* 1954, p. 1237.

¹¹ No Proclamation under section 140 (3) had been made before 31st December, 1961.

the applicant may request the Commissioner to disregard the earlier application for the purposes of the last two preceding sections and, if he so requests:

- (e) the earlier application shall be so disregarded; and
- (f) neither the applicant nor any other person is capable of making use of the earlier application as a basic application for the purposes of this Part.

Partial priorities

142A. — Where a claim of the complete specification accompanying a Convention application is fairly based on matter which was first disclosed in the Convention country in a specification lodged in connexion with the basic application or with one of the basic applications on a date after the making of that basic application, the priority date of that claim is the date on which that matter was so disclosed.

Manner of making Convention application

143. — (1)¹² A Convention application:

- (a) shall, subject to the next succeeding paragraph, be made and proceeded with in the same manner as an ordinary application under this Act; and
- (b) shall be accompanied by a complete specification.

(2)¹² The complete specification accompanying a Convention application may include a claim the priority date of which is the date of lodgment of that complete specification.

(3) In addition to the complete specification, a copy or copies of the specification or specifications, or corresponding documents, filed or deposited by the applicant in the Patent Office of the Convention country in which the basic application was made, certified by the official chief or head of the Patent Office of the Convention country or otherwise verified to the satisfaction of the Commissioner, shall be lodged at the Patent Office:

- (a) at the same time as the application is so lodged;
- (b) within three months after that time; or
- (c) within such further period after that time as the Commissioner allows.

(4) If any such specification or other document is in a foreign language, a translation of the specification or document, verified by declaration or otherwise to the satisfaction of the Commissioner, shall be annexed to the specification or document.

Date of making application in Convention country

144. — For the purposes of this Act, the date on which an application was made in a Convention country is such date as the Commissioner is satisfied, by certificate of the official chief or head of the Patent Office of the Convention country or otherwise, is the date on which the application was made in that Convention country.

¹² These sub-sections were substituted by sub-section (1) of section 26 of the *Patents Act* 1960. Sub-section (2) of that section reads as follows:

“(2) The amendment made by the last preceding sub-section shall be deemed to have come into operation on the first day of May, One thousand nine hundred and fifty-four.”

Disclosure in Convention applications

145. — For the purposes of this Act:

- (a) matter shall be deemed to have been disclosed in a basic application if it was claimed or disclosed (otherwise than by way of disclaimer or acknowledgment of prior art) in the basic application or in a specification or other document lodged in support of, and at the same time as, the basic application; and
- (b) account shall not be taken of a disclosure effected by such a specification or other document unless a copy of the specification or document is lodged at the Patent Office with the Convention application or within such further time as is prescribed.

Part XVII. The Appeal Tribunal

Appeal Tribunal

146. — (1) The High Court is the Appeal Tribunal for the purposes of this Act.

(2) The High Court has jurisdiction to hear and determine appeals which lie to the Appeal Tribunal under this Act.

Jurisdiction to be exercised by a single Justice

147. — The jurisdiction of the High Court as the Appeal Tribunal shall be exercised by a single Justice.

Intervention by Commissioner

148. — The Appeal Tribunal may grant to the Commissioner leave to intervene in an appeal to the Appeal Tribunal.

Powers of Appeal Tribunal

149. — Upon the hearing of an appeal, the Appeal Tribunal may:

- (a) if it thinks fit, call in the aid of an assessor specially qualified to assist it in the hearing and determination of the appeal;
- (b) admit further evidence, either orally or upon affidavit or otherwise;
- (c) permit the examination and cross-examination of witnesses, including witnesses who gave evidence orally or upon affidavit or otherwise at the hearing before the Commissioner;
- (d) order an issue of fact to be tried in such manner as it directs;
- (e) affirm, reverse or modify the decision, determination or direction appealed from;
- (f) give such judgment, or make such order, as in all the circumstances it thinks fit, or refuse to make an order; and
- (g) order a party to pay costs to another party.

Special case

150. — (1) The Appeal Tribunal may state a case or reserve a question for the consideration of a Full Court of the High Court, or may direct a case or question to be argued before a Full Court of the High Court.

(2) A Full Court of the High Court has jurisdiction to hear and determine the case or question.

Appeals

151. — A Full Court of the High Court has jurisdiction to hear and determine appeals from a judgment or order of the Appeal Tribunal with respect to which a Full Court of the High Court grants leave to appeal.

Part XVIII. Miscellaneous

Devolution of patents

152. — (1) The rights granted to a patentee by a patent are personal property and are capable of assignment and of devolution by operation of law.

(2) An assignment of a patent shall be in writing signed by or on behalf of the assignor and assignee.

(3) A patent may be assigned for a place in or part of Australia.

Co-ownership of patents

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

(2) Subject to this section and to the next succeeding section, where two or more persons are patentees, each of those patentees is, unless an agreement to the contrary is in force, 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 next succeeding section and to any agreement for the time being in force, where there are two or more patentees in respect of a patent, one of those patentees shall not grant a licence under the patent, or assign an interest in the patent, except with the consent of the other patentee or patentees.

(4) Where an article is sold by one or two or more patentees, the purchaser, and a person claiming through him, is entitled to deal with the article in the same manner as if it had been sold by both or all the patentees.

(5) Subject to this section, the laws applicable to ownership and devolution of personal property apply in relation to patents as they apply in relation to other choses in action.

(6) Nothing in sub-section (1) or (2) of this section affects the rights or obligations of a trustee or of the legal representative of a deceased person or rights or obligations arising out of either of those relationships.

Power of Commissioner to give directions to co-owners

154. — (1) Where there are two or more patentees in respect of a patent, the Commissioner may, upon application made to him by one or more of those patentees, give such directions in accordance with the application as to a dealing with the patent or interest in the patent, the grant of licences under the patent or the exercise of a right under the last preceding section in relation to the patent, as he thinks fit.

(2) If a patentee fails, within fourteen days after being requested in writing by one of the other patentees to execute an instrument or to do some other thing required for the carrying out of a direction given under the last preceding sub-section, to execute that instrument or to do that thing, the Commissioner may, upon application made to him by one of those other patentees, give directions empowering a person to execute that instrument or to do that thing in the name and on behalf of the person in default.

(3) Before giving a direction in pursuance of an application under this section, the Commissioner shall give an opportunity to be heard:

- (a) in the case of an application under sub-section (1) of this section — to the other patentee or patentees; or
- (b) in the case of an application under sub-section (2) of this section — to the person in default.

(4) A direction shall not be given under this section:

- (a) so as to affect the rights or obligations of a trustee or of the legal representative of a deceased person or rights or obligations arising out of either of those relationships; or
- (b) which is inconsistent with the terms of an agreement between the patentees.

(5) An appeal lies to the Appeal Tribunal from a decision or direction of the Commissioner under this section.

Refusal of certain applications

155. — (1) The Commissioner may refuse to accept an application and complete specification or to grant a patent:

- (a) for an invention the use of which would be contrary to law; or
- (b) on the ground that the specification claims as an invention:

- (i) a substance which is capable of being used as food or medicine, whether for human beings or for animals and whether for internal or external use, and is a mere mixture of known ingredients; or
- (ii) a process producing such a substance by mere admixture.

(2) An appeal lies to the Appeal Tribunal from a decision of the Commissioner under the last preceding sub-section.

Priority dates may be amended

156. — An amendment under this Act of a complete specification may be or include an amendment of the priority date of a claim.

Invalid claim not to vitiate valid claim

157. — Where a complete specification contains two or more claims, the invalidity of the patent so far as it relates to one claim does not affect the validity of the patent so far as it relates to another claim.

Invention not anticipated or patent not invalid in certain cases

158. — (1) Objection shall not be taken to an application for patent, so far as the invention is claimed in any claim of

the complete specification, and a patent, so far as the invention is so claimed, is not invalid, by reason only of

- (a) the invention, so far as so claimed, having been published in Australia
 - (i) in a specification lodged in connexion with an application for a patent made in Australia and dated not less than fifty years before the priority date of that claim;
 - (ii) in a specification describing the invention for the purpose of an application for a patent or similar protection in a country outside Australia made not less than fifty years before that date; or
 - (iii) in an abridgment of, or extract from, a specification referred to in either of the last two preceding sub-paragraphs, published under the authority of the Commissioner or of the government of a country outside Australia;
- (b) the invention, so far as so claimed, having been published or used before the priority date of that claim, if the Commissioner, Appeal Tribunal or court is satisfied
 - (i) that the publication was made or the user took place without the knowledge and consent of the applicant or patentee;
 - (ii) that the subject of the publication or user was derived or obtained from the applicant or patentee or from some person from whom the applicant or patentee derived his title; and
 - (iii) if the applicant or patentee was aware of the publication or user before the priority date of that claim, that he applied for a patent for the invention with all reasonable diligence after becoming aware of the publication or user;
- (c) the exhibition of the invention, so far as so claimed, at an exhibition certified by the Attorney-General, by notice in the *Gazette*, to be an exhibition for the purposes of this section;
- (d) the publication of the invention, so far as so claimed, during the period of the holding of such an exhibition;
- (e) the use of the invention, so far as so claimed, for the purpose of such an exhibition in the place where the exhibition is held;
- (f) the use of the invention, so far as so claimed, during the period of the holding of such an exhibition by a person elsewhere without the knowledge and consent of the applicant or patentee;
- (g) by the publication of the invention, so far as so claimed, in a paper prepared by the actual inventor and read before a learned society or, if the paper was not so read, published with his consent by or on behalf of such a society, if an application for a patent for the invention was made within six months after the reading or publication of the paper, as the case may be;
- (h) the invention, so far as so claimed, having been publicly worked in Australia, within one year before the priority date of that claim
 - (i) by the patentee or applicant or by a person from whom he derives his title; or

- (ii) by some other person with the consent of a person referred to in the last preceding sub-paragraph; if the working was for the purpose of reasonable trial only and if it was reasonably necessary, having regard to the nature of the invention, that the working for that purpose should have been in public;
- (i) the publication of the invention
 - (i) by the patentee or applicant or by a person from whom he derives his title; or
 - (ii) by some other person with the consent of a person referred to in the last preceding sub-paragraph, being publication
 - (iii) to the Commonwealth or a State or to an authority of the Commonwealth or a State; or
 - (iv) to a person authorized by the Commonwealth or a State to make an investigation of the invention; or
- (j) anything done for the purpose of an investigation referred to in sub-paragraph (iv) of the last preceding paragraph.

(2) Paragraphs (c), (d), (e) and (f) of the last preceding sub-section apply only if the applicant or patentee, before exhibiting the invention, has given to the Commissioner notice of his intention to exhibit the invention and an application for a patent for the invention has been made before the closing of the exhibition, or, if the exhibition was open for a longer period than six months, within six months after the opening of the exhibition.

Extension of times by reason of errors

160. — (1) Where, by reason of an error or omission on the part of an officer or person employed in the Patent Office, an act or step in relation to an application for a patent or in proceedings under this Act (not being proceedings in a court) required to be done or taken within a certain time has not been so done or taken, the Commissioner shall extend the time for doing the act or taking the step.

- (2) Where, by reason of
 - (a) an error or omission on the part of the person concerned or of his agent or attorney; or
 - (b) circumstances beyond the control of the person concerned,
 an act or step in relation to an application for a patent or in proceedings under this Act (not being proceedings in a court) required to be done or taken within a certain time has not been so done or taken, the Commissioner may, upon application by the person concerned, but subject to this section, extend the time for doing the act or taking the step.

(3) The time for the doing of an act or the taking of a step may be extended under either of the last two preceding sub-sections although that time has expired.

(4) Where an application for extension of time under sub-section (2) of this section is made more than three months after the expiration of the time allowed for the doing of the act or the taking of the step, the Commissioner shall advertise the application in the *Official Journal*.

(5) A person may, as prescribed, oppose the granting of the application.

(6) Where an extension of time is granted under this section, such provisions as are prescribed have effect for the protection or compensation of persons who availed themselves, or took definite steps by way of contract or otherwise to avail themselves, of the invention the subject of the application for the patent concerned by reason of the act or step in relation to which the extension was granted not having been done or taken within the time allowed.

(7) An appeal lies to the Appeal Tribunal from a decision of the Commissioner under this section.

Examiners' reports to be communicated

161. — A copy of each report of an Examiner under this Act shall, subject to Part XIV, be sent to the applicant or patentee, as the case requires.

Exercise of discretionary power by Commissioner

162. — Where a discretionary power is by this Act given to the Commissioner, he shall not exercise that power adversely to the person applying for the exercise of that power without (if so required by that person within such time as is specified by the Commissioner) giving to that person an opportunity of being heard.

Determination of question of interest

163. — (1) Where in this Act provision is made that a person interested may give notice to the Commissioner of opposition to an action or matter or may do some other act, or that the Commissioner shall hear a person interested, the Commissioner may, as a preliminary issue, hear and determine the question of the right of the person concerned to give the notice of opposition or do the other act, or to be heard by the Commissioner, as the case may be.

(2) An appeal lies to the Appeal Tribunal from a decision of the Commissioner under this section.

Making and signing of application

164. — Where by this Act an application, notice or request is required or permitted to be made or signed by a person, that application, notice or request may be made or signed, on behalf of that person, by a person entitled under this Act to practise as a patent attorney.

Declaration by infant, lunatic, etc.

165. — If a person is, by reason of infancy, lunacy or other disability, incapable of making a declaration, or doing anything required or permitted by this Act, the guardian or committee of the incapable person, or if there is no such guardian or committee, a person appointed by a court, or a Justice or Judge of a court, of the Commonwealth or of a State or Territory of the Commonwealth possessing jurisdiction in respect of the property of incapable persons, upon the petition of a person on behalf of the incapable person, or of some other person interested in the making of the declaration or the doing of the thing, may make the declara-

tion (or a declaration as nearly corresponding to the declaration as the circumstances permit) and may do that thing, in the name and on behalf of the incapable person, and all acts so done are, for the purposes of this Act, as effectual as if they had been done by the incapable person and that person had not been incapable at the time of the making of the declaration or the doing of the thing.

Particulars of objections

166. — (1) A person who applies under this Act for the revocation of a patent, and a person who, in an action or proceeding, disputes the validity of a patent, either wholly or in so far as it relates to a claim of the complete specification, shall deliver with his petition, or with the pleading or other document in which he disputes the validity of the patent, particulars of the grounds of invalidity on which he relies.

(2) If one of those grounds is previous publication or user, the particulars shall state the time and place of the previous publication or user alleged, and, in the case of previous user, the particulars

- (a) shall specify the name of the person who is alleged to have made the previous user;
- (b) shall specify the period during which the previous user is alleged to have continued;
- (c) shall contain a description sufficient to identify the previous user; and
- (d) if the previous user relates to machinery or apparatus, shall specify whether the machinery or apparatus is in existence and, if it is in existence, where it can be inspected.

(3) Except by leave of the Court, Justice or Judge

- (a) evidence is not admissible in proof of a ground of invalidity of which particulars have not been given; and
- (b) evidence as to machinery or apparatus which is in existence at the date of the delivery of the particulars is not admissible unless it is proved that the party relying on the evidence, if the machinery or apparatus is in his own possession, has offered inspection of the machinery or apparatus, or, if it is not his own possession, has used reasonable endeavours to obtain inspection of the machinery or apparatus for the other parties to the petition, action or proceeding.

(4) The court, Justice or Judge may extend the time for delivering particulars under this section and may allow particulars so delivered to be amended.

Assessor

167. — On the hearing of an action or proceeding under this Act, the High Court may, if it thinks fit, call in the aid of an assessor specially qualified to assist it in the hearing and trial of the case.

Costs where patent bad in part

168. — In an action or proceeding in which the validity of a patent is disputed, the court may, if it is of opinion that some of the claims in the complete specification which are alleged to be invalid are not invalid but that others are in-

valid, apportion the costs between the parties to the action or proceeding in such manner as it thinks just.

Certificate of validity

169. — In an action or proceeding in which the validity of a patent is disputed, the court may certify that the validity of a claim of the complete specification came in question, and if the court so certifies, then, in a subsequent action or proceeding for the infringement of that claim, or for the revocation of the patent so far as it relates to that claim, the patentee, or other person supporting the validity of the claim, on obtaining a final order or judgement in his favour, is entitled, unless the court trying the action or proceeding otherwise directs, to have his full costs, charges and expenses as between solicitor and client so far as that claim is concerned.

Security for costs

170. — If a person who
(a) gives notice of opposition under this Act; or
(b) appeals to the Appeal Tribunal,
neither resides nor carries on business in Australia, the Appeal Tribunal or the Commissioner, as the case may be, may require that person to give security for the costs of the proceeding or appeal, and in default of security being given to the satisfaction of the Appeal Tribunal or the Commissioner, as the case may be, the proceeding or appeal may be dismissed.

Costs of attendance of patent attorney

171. — Where, at the hearing of an action or proceeding under this Act, a patent attorney attends in court for the purpose of assisting a party in the conduct of the hearing and an order is made for payment of the costs of that party, those costs may include an allowance in respect of that attendance.

Service of orders on appeal

172. — (1) Where by this Act provision is made for the service on the Commissioner of a judgment or order of a court, and an order is made by the Queen in Council, or by a court, on appeal from such a judgment or order, the person in whose favour the order on appeal is made is not entitled to enforce the order until he has served on the Commissioner an office copy of that order.

(2) Upon the service on him of such an order, the Commissioner shall make such entries (if any) in the Register, or take such other action (if any), as the case requires.

Improperly describing any office as the Patent Office

173. — (1) A person shall not use, in connexion with his business, words which would reasonably lead to the belief that his office is, or is officially connected with, the Patent Office.

Penalty: Twenty pounds.

(2) Without limiting the effect or application of the last preceding sub-section, a person who

- (a) places, or suffers or permits to be placed, on the building in which his office is situated;
- (b) uses in advertising his office or business; or

(c) places on a document, as a description of his office or business, the words "Patent Office", or the words "Office for obtaining Patents", or words of similar import, whether alone or in conjunction with other words, is guilty of an offence.

Penalty: Twenty pounds.

False representation as to patents and patented articles

174. — (1) A person shall not falsely represent that he or another person is the patentee of an invention.

Penalty: One hundred pounds.

(2) A person shall not falsely represent that an article sold by him is patented in Australia or is the subject of an application for a patent in Australia.

Penalty: One hundred pounds.

(3) For the purposes of this section

(a) a person shall be deemed to represent that an article is patented in Australia if there are stamped, engraved or impressed on, or otherwise applied to, the article the word "patent" or "patented", the words "provisional patent", or some other word or words expressing or implying that a patent for the article has been obtained in Australia; and

(b) a person shall be deemed to represent that an article is the subject of an application for a patent in Australia if there are stamped, engraved or impressed on, or otherwise applied to, the article the words "patent applied for", "patent pending", or some other word or words implying that an application for a patent for the article has been made in Australia.

(4) A prosecution under this section shall not be instituted except with the written consent of the Attorney-General or of some person authorized by him.

Publication of journal, indexes, etc.

175. — (1) The Commissioner shall issue periodically an Official Journal containing such matters as are prescribed or as the Commissioner thinks fit.

(2) The Commissioner shall make provision for selling copies of the *Official Journal* and of complete specifications which are open for public inspection.

(3) The Commissioner shall prepare and publish such indexes, abridgments of specifications and other works relating to inventions as he thinks fit.

Fees

176. — (1) There shall be paid to the Commissioner such fees as are prescribed.

(2) Where a fee is payable in respect of the doing of an act by the Commissioner, the Commissioner shall not do that act until the fee has been paid.

(3) Where a fee is payable in respect of the doing of an act by a person other than the Commissioner, or a fee is payable in respect of the lodging of a document, the act shall be deemed to have been done, or the document shall be deemed to have been lodged, notwithstanding the failure to

pay the fee unless, within seven days after the doing of the act or the lodging of the document, the Commissioner sends notice of the failure to pay the fee to the person doing the act or lodging the document, or to his patent attorney, in which case the act shall be deemed not to have been done, or the document shall be deemed not to have been lodged, until the fee has been paid.

Regulations

177. — The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, or for the conduct of any business relating to the Patent Office, and in particular

- (a) making provision for and in relation to the amendment (whether for the purpose of correcting a clerical error or an obvious mistake or otherwise) of an entry in the Register, an application, a provisional specification or any other document or instrument (not being a complete specification) lodged at the Patent Office;
- (aa) making provision for and in relation to the amendment of a patent for the purpose of correcting a clerical error or an obvious mistake;
- (ab) making provision for and in relation to appeals to the Appeal Tribunal from decisions of the Commissioner in relation to applications for amendment made under regulations made by virtue of either of the last two preceding paragraphs;
- (b) for providing for the destruction of documents relating to applications for patents lodged at the Patent Office not less than twenty-five years before the time of destruction; and
- (c) for prescribing penalties not exceeding a fine of Fifty pounds or imprisonment for six months for offences against the regulations.

THE SCHEDULE

Acts repealed

Acts Repealed	Extent of Repeal
Patents Act 1903	The whole
Patents Act 1909	The whole
Patents, Trade Marks and Designs Act 1910	Section 3
Patents Act 1921	The whole
Patents Act 1930	The whole
Patents, Trade Marks and Designs Act 1932	Sections 4, 5, 6 and 7
Patents Act 1933	The whole
Patents Act 1935	The whole
Patents Act 1946	The whole
Statute Law Revision Act 1950	Section 9

CORRESPONDENCE

Letter from Great Britain

By Frederick HONIG, Barrister-at-Law, London

The Law of Industrial Property in 1960

BOOK REVIEWS

Patent Directory, by Professor *Konst. Katzarov*. 6th Edition, 1962, one bound volume of 775 pages in English, 20 × 15 cm. Edited and published in Switzerland, obtainable only direct from Cabinet Katzarov, 62, quai Gustave-Ador, Geneva (Switzerland). Price \$ 16.60 or 72.40 Swiss francs.

Professor *Konst. Katzarov*, who has now established himself as a patent attorney in Geneva, has recently published the sixth edition of his already well-known Patent Directory. *Katzarov's Patent Directory* was first established in 1924 and all previous editions were prepared and published in Bulgaria.

This, the sixth edition, is a fully revised and completed edition which covers a much wider area of legislation and territory. Existing articles have been revised and brought up to date whilst additional articles cover certain more recent developments in the field both of national and international protection of industrial property.

Part I of *Katzarov's Patent Directory* introduces the reader to the general aspects covering the international organisation for the protection of industrial property and now includes the full text of the official English translation of the Convention of Paris for the Protection of Industrial Property, as last revised at Lisbon in October 1958. A further complement is the International Classification of Goods and Services to which Trade Marks apply, as established by the Arrangement of Nice (1957) and as amended up to date.

Part II is now divided into separate continents. Moreover, because of the prevailing influences of certain legislative characteristics, Western Europe and Eastern Europe, North America and Latin America have been dealt with in separate parts. Each continent or part of a continent is preceded by maps and relevant lists of countries. Africa, which is now in full development, is of course treated as a separate continent and though the situation is not yet clear in many of the newly independent States with regard to the industrial property legislation applicable, obvious efforts have been made in order to give the reader what information is now available.

As in previous editions, the task of dealing with the legislative and technical data for each separate country has been entrusted to competent and experienced patent and trade mark agents throughout the world who deal exclusively with the industrial property procedures applicable in their respective countries. Such data however, is not merely restricted to procedures for patent, trade mark and design applications, but also provides the reader with a wealth of general information with respect to national economy, official and other recommended literature, statistics, useful addresses, etc.

Part III contains, as before, an exhaustive list of cable addresses of registered patent and trade mark agents throughout the world. List A gives the cable addresses in alphabetical order with the corresponding names of patent agents, whereas List B gives the patent agents' names in alphabetical order with their corresponding cable addresses.

Professor *Katzarov's Patent Directory* is easy to consult and a number of material improvements both with regard to print and general presentation make it a very compact and useful reference book.

To compile and concentrate in one single volume and in one language information emanating from more than eighty countries and as many contributors is truly a difficult and delicate task and deserves recognition from all those concerned with the industrial property field.

JL.

Review of Soviet literature

(Translation)

Sbornik zakonodatelnykh aktov i postanovlenii po izobretatelstvu i ratsionalizatsii (Collection of legislation and ordinances relating to inventions and improvements). Central Bureau for Technical Information, Moscow, 1961, 144 pages. Price: 45 Kopeks.

KULIKOVA, E. M.: *Metodika podscheta ekonomii ot vnedrenia izobretanii i ratsionalizatotskikh predlozhenii na promyshlennykh predpriiatiakh* (Methods for calculating economies obtained by the exploitation of inventions and suggestions for improvement). Central Bureau for Technical Information, Moscow, 1961, 60 pages. Price: 30 Kopeks.

BLINOV, A. A., VASILIEV, I. V.: *Poriadok patentovaniia sovetskikh izobretanii za granitsei* (Conditions for the grant of patents abroad for Soviet inventions). Central Bureau for Technical Information, Moscow, 1961, 44 pages. Price: 15 Kopeks.

BOGUSLAVSKI, M. M.: *Bourzhouaznoe patentnoe pravo i sovetskoe izobretatel'skoe pravo* (The "bourgeois" law on patents of invention and the Soviet legislation on inventions). Central Bureau for Technical Information, Moscow, 1961, 55 pages. Price: 18 Kopeks.

DORKIN, A. J., TKATCH, Z. A.: *Prava i obyazannosti izobretatelei i ratsionalizatorov* (Rights and obligations of inventors and improvers). Legal Publications, Moscow, 1961, 150 pages. Price: 18 Kopeks.

YAITCHKOV, K. K.: *Izobretenie i ego pravovaya okhrana v SSSR* (The invention and its legal protection in the USSR). Publication of the USSR Academy of Sciences, Moscow, 1961, 220 pages. Price: 71 Kopeks.

Since the new Soviet legislation of 1959 on discoveries, inventions and proposals for improvements, a scientific activity is rapidly developing in this field in the Soviet Union. On the theoretical side, one might quote the remarkable commentary of Professors Antimonov and Fleichits, an account of which was published in the November, 1961, issue of *La Propriété Industrielle*. M. M. Boguslavski accomplished a pioneer work on private international law on inventions. The books mentioned above in the present book review form only part of a whole series recently published. The reasons for this abundance of literature is referred to unanimously in the prefaces of the above mentioned books. For example, M. Yaitchkov, who is a collaborator in the Law Institute of the USSR Academy of Sciences, writes on page 32 of his book mentioned above:

"The creation and use of a new technique is one of the decisive conditions for the construction of the material basis of communism and for Soviet victory in its the peaceful economic competition with the most advanced capitalist states. It is for this very reason that we are concerned with inventions and their legal protection as a special and independent scientific subject."

The four first mentioned books are studies published by the Committee for Inventions and Discoveries organised under the Council of Ministers of the USSR. These studies are intended for the use of employees and civil servants who deal directly with inventions in the administrative and economic organs of the Soviet Union.

The *Collection of Legislation* is based on the text of the basic Law of 24th April, 1959, on Discoveries, Inventions and Improvement Proposals. It contains all the ordinances and rules now in force, including decision No. 531 of 20th May, 1960, of the Central Committee of the Communist Party and of the Council of Ministers of the USSR providing for the improvement of the exploitation of inventions. These decrees, rules and ordinances fill the 142 pages of the "collection", the aim of which is to coordinate the activities of all administrative and economic organs with a view to a maximum exploitation of Soviet inventions and to increase the proportion of use. The proportion of inventions in use for the years 1957-1959 amounted to 4650 out of a total of 26,400 registered inventions.

The study by E. M. Kulikova contains a brief analysis of the economies that can be made by the exploitation of inventions and suggestions for improvement, including detailed information for calculating such

savings in the different economic fields. Compensation paid to the authors of inventions or improvement proposals are fixed on the basis of these figures.

The work of M. Blinov and M. Vasiliev relating to the grant of patents in foreign countries sets out the conditions and the different stages in the procedure for obtaining patents in foreign countries for Soviet inventions. First the Committee for Inventions and Discoveries, as organised under the Council of Ministers of the USSR must be informed of the application for authority to apply abroad. The matter is then transmitted to the Patents Section of the USSR Chamber of Commerce which is responsible for lodging the patent application with the foreign Industrial Property Office. Finally, the Ministry of Foreign Trade negotiates the licence with the future foreign licensee. This study gives examples of how to draft the application and the claims and for establishing the necessary documents (drawings, etc.). Details concerning fees to be paid are also included.

The comparative study of Soviet Law with the "bourgeois" law on inventions by M. M. Boguslavski, also published in this series, certainly goes beyond the interest of only the Soviet civil servants. Naturally, a summary of some 50 pages can only give a very simplified picture of the two systems. Nevertheless, the author examines all the more important questions relating to present-day industrial property. The systems for the granting of patents, employees' inventions, personal and moral rights of the author, and problems relating to sanctions are all presented in a striking manner in order to bring to light the differences of the two systems. This brief survey may serve as a basis for more detailed discussions and comparative studies of the two systems of the laws for inventions among jurists of different ideologies.

The book by M. Dorkin and M. Tkatch is devoted to the popularization of the work of inventors and improvers. The authors have analysed the law on inventions now in force in the framework of 199 questions and answers drafted in simple terms. The replies act as a guide to the author of an invention or proposal for improvement, and aim at explaining to him his rights and obligations; they also indicate the authorities to whom he should apply in order to obtain legal protection over his inventions and such compensation as is granted by law for the economies resulting from the exploitation of his protected ideas.

M. Yaitchlov, in his separate treatise deals with the theoretical problems of Soviet Law on inventions in the framework of the present state of Soviet economy. His aim is to give a general picture of the development of this law in Soviet legislation, theory and case law. References to foreign sources are only rarely mentioned.

The general historical outline in Chapter I shows the reader how it has become necessary, in the course of the industrialisation of the USSR, to widen the field of protection by introducing a tripartite classification of protected objects in order to include not only new inventions, but also technical improvements and rationalisation proposals. With regard to the two last-mentioned categories, novelty not being a condition for protection, foreign inventions have been used freely without licensing contracts with the foreign patent owners. In the present state of Soviet technique, original inventions have become predominant; this is the reason why the 1959 Law deals more especially with inventions, the other two categories being combined with the aim of protecting "know how". In an analysis of the conception of the invention (Chapter II), problems relating to novelty, technical progress and non-patentable inventions are examined in detail. A synoptic table on the development of the legal protection of inventions in the USSR (Chapter III) is completed by references to the laws on inventions in force in the Peoples' Republics. Chapter IV deals with the system for granting patents and certificates of authorship, the merits and the inconveniences of prior examination, and the history of the authority responsible for the registration of inventions. Always in the light of historical perspective, Chapter V covers the subjects of inventors' law whilst Chapter VI examines moral rights, personal rights of the author and the right of the State to exploit.

J. TOTH, Geneva.