

No. 30 of 2000.

***Patents and Industrial Designs Act 2000.***

Certified on: 19/1/2001.



INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 30 of 2000.

***Patents and Industrial Designs Act 2000.***

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

***Patents and Industrial Designs Act 2000,***

Being an Act to make provision for the protection industrial property rights, namely patents, industrial designs and geographical indications and for related purposes.

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

**PART 1. – PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C of the *Constitution*, namely –

- (a) the right to freedom of expression conferred by Section 46 of the *Constitution*; and
- (b) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
- (c) the right to privacy conferred by Section 49 of the *Constitution*,

is a law that is made for the purposes of giving effect to the public interest in public order.

(2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments* it is hereby declared that this Act related to a matter of national interest.

(3) For the purposes of Section 53 of the *Constitution* (protection against unjust deprivation of property) it is hereby declared that the purposes of the exploitation of an invention under Section 32 are public purposes.

**2. INTERPRETATION.**

In this Act, unless the contrary intention appears –

“**Court**” means the National Court;

“**exploitation of a registered industrial design**” means the making, offering for hire, selling or importation of articles incorporating a design which is a copy, or substantially a copy, of the registered industrial design;

“**exploitation of a patented invention**” means any of the following acts:

- (a) where the subject matter of a patent is a product –
  - (i) making, using, offering for hire, selling and importing the product; and
  - (ii) stocking the product for the purposes of offering for sale, sale or use;
- (b) where the subject matter of a patent is a process –
  - (i) using the process; and
  - (ii) using, offering for sale, selling and importing a product obtained directly by means of the process;

“**industrial design**” means any composition of lines or colours or any three-dimensional form, or any material, whether or not associated with lines or colours, provided that such composition, form or material gives a special appearance to a product of industry or handicraft and can serve as a pattern for a product of industry or handicraft and appeals to and is judged by the eye;

“**international classification**” means, in relation to industrial designs, the classification according to the Locarno Agreement Establishing an International Classification for Industrial Designs;

“**invention**” means an idea of an inventor which permits in practice the solution of a specific problem in the field of technology and may be, or may relate to, a product or a process, but does not include –

- (a) a discovery, scientific theory or mathematical method; or
- (b) a scheme, rule or method for –
  - (i) doing business; or
  - (ii) performing purely mental acts; or
  - (iii) playing games; or
- (c) diagnostic, therapeutic and surgical methods, but not including any products for use in any such methods, for the treatment of humans or animals;



“**inventor**” in relation to a patent, means the inventor of the invention to which that patent applies;

“**Paris Convention**” means the Paris Convention for the protection of Industrial Property dated 20 March 1881, as last revised;

“**patent**” means the title granted to protect an invention;

“**priority date**” means the date of the earlier application that serves as the basis for the right of priority provided for in the Paris Convention;

“**registered industrial design**” means an industrial design registered under this Act;

“**Registers**” means the Registers referred to in Section 8;

“**Registrar**” means the Registrar of Patents, Industrial Designs and Trade Marks appointed under Section 4;

“**this Act**” includes the Regulations.

### 3. APPLICATION.

This Act binds the State.

**PART 2. – ADMINISTRATION.**

***Division 1.***

***Registrar.***

**4. OFFICE OF REGISTRAR.**

(1) For the purposes of this Act, the Minister, by notice in the National Gazette –

- (a) shall appoint a suitably qualified person to be Registrar of Patents and Industrial Designs; and
- (b) may appoint such Deputy Registrars of Patents and Industrial Designs and other officers as he considers necessary.

(2) A Deputy Registrar of Patents and Industrial Designs may, subject to the directions of the Registrar, exercise any power or carry out any function of the Registrar.

(3) The appointment of a Deputy Registrar of Patents and Industrial Designs does not affect the exercise of a power or the performance of a function by the Registrar.

(4) Until the Minister has made an appointment under Subsection (1)(a), the Registrar of Trade Marks appointed under the *Trade Marks Act 1978* (Chapter 385) is the Registrar of Patents and Industrial Designs.

**5. SEAL.**

(1) The Registrar shall have and use as his seal of office a seal in such form as the Minister approves.

(2) In pursuance of his statutory duties and functions, the Registrar may affix, or cause to be affixed, a facsimile of his signature which shall be deemed to be the signature of the Registrar.

(3) All courts, Judges and persons acting judicially shall take judicial notice of –

- (a) a signature of any person who holds or has held the office of Registrar or Deputy Registrar and of the fact that that person holds or has held that office; and
- (b) the seal of the Registrar.

**6. POWERS OF REGISTRAR.**

(1) The Registrar may, for the purposes of this Act –

- (a) summon witnesses; and
- (b) receive evidence on oath, whether orally or otherwise; and
- (c) require the production of documents or articles.

(2) The Registrar may, on such terms as to costs or otherwise as he thinks just whether for the purpose of correcting a clerical error or on obvious mistake or otherwise, permit the amendment of –

- (a) an application for –
  - (i) the grant of a patent; or
  - (ii) the registration of an industrial design; or
- (b) the Register of patents; or
- (c) the Register of industrial designs; or
- (d) any other document lodged at his office.

(3) An amendment of an application shall not be permitted under Subsection (2) where the amendment would substantially affect identity of –

- (a) the invention, the subject of the application for a grant of patent; or
- (b) the industrial design as specified in the application before amendment.

(4) Where the Registrar is of the opinion that any document submitted to him –

- (a) contains any matter contrary to law; or
- (b) by reason of any omission or misdescription has not been duly completed; or
- (c) does not comply with the requirements of this Act; or
- (d) contains any error, alteration or erasure,

he may refuse to receive or register the document and request that the document be amended or completed appropriately or resubmitted or that a fresh document be submitted in its place.

(5) The Registrar may, where he is satisfied that the circumstances justify it, on receiving a written request, extend the time for doing any act or taking any proceeding under this Act, upon notice to the parties concerned and upon such terms as he may direct.

(6) An extension under Subsection (5) may be granted notwithstanding that the time specified for doing the act or taking the proceeding has expired.

## **7. EXERCISE OF DISCRETIONARY POWERS.**

The Registrar shall give any party to a proceeding before him an opportunity of being heard before exercising adversely any discretionary power vested in him by this Act.

***Division 2.***  
***The Registers.***

**8. REGISTERS.**

(1) The Registrar shall establish and maintain separately –

- (a) a Register of patents; and
- (b) a Register of industrial designs.

(2) All matters required by this Act to be registered shall be affected in the appropriate Register.

**9. INSPECTION.**

Each Register shall be available for inspection by any person, on payment of the prescribed fee, during such hours as the office of the Registrar is open for public business.

**10. CERTIFICATE, ETC.**

Subject to this Act, the Registrar may –

- (a) issue copies of or extracts from entries in the Registers or other documents or publication in his office, certified under his hand and seal; or
- (b) certify under his hand and seal that an entry, act, matter or thing required or authorized under this Act to be made or done, has or has not been made or done, as the case may be.

**11. REGISTERS, ETC, TO BE EVIDENCE.**

(1) Each Register is evidence of all matters required or authorized by this Act to be entered in it.

(2) A certified copy or extract issued by the Registrar under Section 10 is evidence in all courts and proceedings without further proof or production of the original.

(3) A certificate of the Registrar under Section 10 is evidence of the statements contained in the certificate.

**PART 3. – PATENTS.**

***Division 1.***

***General.***

**12. PATENTABLE INVENTIONS.**

(1) An invention is patentable if it –

- (a) is new in accordance with Section 13; and
- (b) involves an inventive step, in accordance with Section 14; and
- (c) industrially applicable in accordance with Section 15.

(2) An invention, the commercial exploitation of which would –

- (a) be contrary to public order or morality; or
- (b) seriously prejudice the environment,

is not patentable.

**13. NEW INVENTION.**

(1) An invention is new where it is not anticipated by prior art.

(2) For the purposes of this section, prior art shall consist of everything disclosed to the public, anywhere in the world, by –

- (a) tangible form; or
- (b) oral disclosure; or
- (c) use; or
- (d) any other way,

prior to the filing, or, where appropriate, the priority date of the application claiming the invention.

(3) For the purposes of Subsection (2), disclosure to the public of the invention shall not be taken into consideration where –

- (a) it occurred within 12 months preceding the filing date, or, where applicable, the priority date of the application; and
- (b) it way by reason or in consequence of acts committed by the applicant or his predecessor in title or of an abuse committed by a third party without regard the applicant or his predecessor in title.

**14. INVENTION INVOLVING AN INVENTIVE STEP.**

An invention involves an inventive step where, having regard to the prior art relevant to the application claiming the invention as defined in Section 13(2), it would not have been obvious to a person skilled in the relevant act in the light of the

common general knowledge as it existed prior to the filing, or, where appropriate, the priority date of the application claiming the invention.

#### **15. INVENTION INDUSTRIALLY APPLICABLE.**

(1) An invention is industrially applicable where it can be made or used in any kind of industry.

(2) For the purposes of Subsection (1), “industry” is to be construed in its broadest sense and in particular, with prejudice to the foregoing, is to include handicrafts, agriculture, fishery and services.

#### **16. RIGHT TO PATENT.**

(1) The right to a patent belongs to the inventor.

(2) Where two or more persons have jointly made an invention, the right to the patent shall belong to them jointly.

(3) Where, and to the extent to which, two or more persons have made the same invention independently of each other, the person whose application for the patent has –

(a) the earliest filing date; or

(b) if priority is claimed, the earliest validly claimed priority date,

shall have the right to the patent as long as the application is not withdrawn, abandoned or rejected.

(4) Where an invention is made in execution of an employment contract, the right to the patent shall belong, in the absence of contractual provisions to the contrary, to the employer.

#### **17. INVENTOR TO BE NAMED IN PATENT.**

(1) The inventor shall be named in a patent unless, in a written declaration signed by him and addressed to the Registrar, he indicates that he wishes not to be named.

(2) A promise or understanding made by an inventor to any person to the effect that he will make a declaration of the kind referred to in Subsection (1) is without legal effect.

#### **18. ASSIGNMENT, ETC., OF RIGHT TO PATENT.**

The right to a patent may be –

(a) assigned; or

(b) transferred by succession.

***Division 2.***  
***Application for Patent.***

**19. APPLICATION.**

(1) An application for a patent shall be filed with the Registrar.

(2) An application under Subsection (1) –

(a) shall contain –

- (i) a notice in accordance with Subsection (4); and
- (ii) a description in accordance with Subsection (5); and
- (iii) one or more claims in accordance with Subsection (6); and
- (iv) where it is necessary for the understanding of the invention, one or more drawings; and
- (v) an abstract in accordance with Subsection (7); and
- (vi) any other prescribed information or documents; and

(b) may contain a declaration in accordance with Section 23 claiming a priority; and

(c) shall be accompanied by the prescribed fee.

(3) Where an application is not accompanied by the prescribed fee, the Registrar may refuse to accept it for filing and the application shall be treated as if it had not been filed.

(4) The notice referred to in Subsection (2)(a)(i) shall –

(a) contain –

- (i) a request that a patent be granted; and
- (ii) the name of the applicant; and
- (iii) other prescribed information concerning the applicant, the inventor and the agent (if any); and
- (iv) the title of the invention; and

(b) where the applicant is not the inventor, a statement justifying the right of the applicant to the patent.

(5) The description referred to in Subsection (2)(a)(ii) shall –

- (a) disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person having ordinary skill in the applicable art; and
- (b) indicate the best method known to the applicant at the filing date, or where priority is claimed at the priority date, of the application, for carrying out the invention.

(6) The claim or claims referred to in Subsection (2)(a)(iii) shall –

- (a) define the matter for which protection is sought; and
- (b) be clear and concise; and
- (c) be fully supported by the description, which, with the drawings, may be used to interpret the claims.

(7) The abstract referred to in Subsection (2)(a)(v) shall provide a clear understanding of the problems and solutions involved and a concise summary of –

- (a) the technical information relating to the invention; and
- (b) the technical field to which the invention relates; and
- (c) the principal use or uses of the invention; and
- (d) where applicable, any formula that, of all the formulas contained in the description, best characterises the invention,

but shall not –

- (e) contain statements of alleged merits or value of the invention; or
- (f) be taken into consideration for the purposes of interpreting the scope of the protection of the invention.

## **20. WITHDRAWAL OF APPLICATION FOR GRANT OF PATENT.**

(1) An applicant may, at any time before a patent is granted on the application, withdraw the application by filing with the Registrar a notice in writing signed personally by the applicant.

(2) A notice filed under Subsection (1) is irrevocable.

## **21. UNITY OF INVENTION.**

(1) An application under Section 19(1) shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

(2) Where a group of invention is claimed in one and the same application, the requirement for a single general inventive concept referred to in Subsection (1) shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

(3) The fact that a patent has been granted on an application which did not comply with Subsection (1) is not a ground for the invalidation of the patent.

## **22. VOLUNTARY AMENDMENT AND DIVISION OF APPLICATION.**

(1) An application may, at any time before a patent is granted on an application –

- (a) subject to Subsection (2), file a request in the prescribed form for the amendment of the application; and



(b) subject to Subsection (3), file a request in the prescribed form to divide the application into two or more applications (referred to as “divisional applications”).

(2) A request for amendment under Subsection (1)(a) of an application shall not go beyond the disclosure in the initial application.

(3) A divisional application –

(a) shall not go beyond the disclosure in the initial application; and

(b) is entitled to the filing date and, where applicable, the priority date of the initial application.

(4) The onus shall be on the applicant to ensure that any request for amendment or divisional application does not go beyond the disclosure in the initial application.

(5) Where a request under Subsection (1) is in the prescribed form and accompanied by the prescribed fee, the Registrar shall grant the request and make the amendment or division to the application, whichever is applicable.

### **23. RIGHT OF PRIORITY FOR PATENTS.**

(1) An application under Section 19(1) may contain a declaration claiming a right of priority, as provided for in the Paris Convention, of one or more earlier national, regional or international applications filed by the applicant or his predecessor in title in or for any State which is a party to the Paris Convention or a member of the World Trade Organization.

(2) Where an application contains a declaration under Subsection (1), the Registrar may request the applicant to furnish, within a time limit specified by the Registrar and in a manner directed by the Registrar, a copy of the earlier application certified as a true and correct copy by the authority or body with which it was filed.

(3) The effect of a declaration under Subsection (1) shall be as provided in the Paris Convention.

(4) Where the Registrar finds that the requirements of this section and any matters prescribed in relation to this section have not been fulfilled, the declaration is considered not to have been made.

### **24. INFORMATION CONCERNING CORRESPONDING FOREIGN APPLICATION AND PATENTS.**

Where the Registrar so requests, an applicant under Section 19(1) shall, within a time limit specified by the Registrar –

(a) provide such information as is requested by the Registrar, including but not limited to, the date and number of any application for a patent filed by the applicant in another country or jurisdiction (in this section referred to as “the foreign application”), relating to the same or

essentially the same invention as that claimed in the application filed with the Registrar; and

- (b) furnish to the Registrar the following documents relating to any foreign application:
  - (i) a copy of any communication received by the applicant concerning the results of any search or examination carried out in respect of the foreign applications;
  - (ii) a copy of any patent granted on the basis of the foreign application;
  - (iii) a copy of any final decision rejecting the foreign application or refusing the grant requested in the foreign application; or
  - (iv) a copy of any final decision invalidating the patent granted on the basis of the foreign application.

## **25. FILING DATE FOR PATENTS.**

(1) Subject to Section 19(3), where an application under Section 19 contains –

- (a) an express or implied indication that a patent is sought; and
- (b) indication allowing the identity of the applicant to be established; and
- (c) information which, on the face of it, appears to be a description of an invention,

the Registrar shall record as the filing date the date of receipt of the application.

(2) Where the Registrar finds that an application under Section 19 did not, at the time of its receipt by him, contain the matters referred to in Subsection (1), he shall –

- (a) invite the applicant to file a correction within a time limit specified by the Registrar and in a manner directed by the Registrar; and
- (b) where the required correction is made in accordance with Paragraph (a), record as the filing date the date of receipt by the Registrar of the required correction; and
- (c) where the required correction is not made in accordance with Paragraph (a), treat the application as if it had not been filed.

(3) Where an application under Section 19 refers to drawings and no drawings are included with the application, the Registrar shall –

- (a) invite the applicant to furnish the drawings within a time limit specified by the Registrar and in a manner directed by the Registrar; and
- (b) where the drawings are furnished in accordance with Paragraph (a), record as the filing date the date of receipt by the Registrar of the drawings; and

- (c) where the drawings are not furnished in accordance with Paragraph (a), record as the filing date the date of receipt by the Registrar of the application and treat any reference to the drawings as non-existent.

**26. EXAMINATION OF PATENT.**

After according a filing date under Section 25 for an application under Section 19 –

- (a) the Registrar shall examine whether –
  - (i) the application complies with the requirements of Section 19(2) and (4) and any Regulations pertaining thereto; and
  - (ii) the application complies with those requirements of this Act, and the Regulations which are designated by the Regulations as formal requirements for the purposes of this Act; and
  - (iii) information requested under Section 24, if any, has been provided; and
- (b) where the Registrar is of the opinion that the application does not comply with requirements of Paragraph (a) he may invite applicant to file, within a time limit specified by the Registrar and in a manner directed by the Registrar –
  - (i) a correction or amendment; or
  - (ii) a submission as to whether the application complies with the requirements of Paragraph (a); or
  - (iii) both (i) and (ii),

and where after the expiration of the time limit specified by the Registrar, whether or not the applicant has responded to the invitation of the Registrar under this paragraph, the Registrar is still of the opinion that the application does not comply with the requirements of Paragraph (a) the Registrar shall refuse the application and notify the applicant in writing of his decision.

***Division 3.***

***Grant of Patents and Changes in Patents.***

**27. GRANT OF PATENTS.**

(1) Where the Registrar is satisfied that the requirements of Section 26(a) have been met, he shall grant the patent.

(2) The Registrar shall as soon as practicable after a patent has been granted –

- (a) record the patent in the Registrar of Patents; and

- (b) issue to the applicant a certificate of the grant of the patent and a copy of the patent; and
- (c) publish a reference to the grant of the patent in a journal approved by the Minister by notice in the National Gazette.

## **28. CHANGE IN PATENT.**

(1) Subject to Subsection (2), the Registrar shall, upon the written request of the owner of a patent, make changes in the text of drawings of the patent in order to limit the protection conferred by the patent.

(2) A change under Subsection (1) must not result in the disclosure contained in the patent extending beyond the disclosure contained in the initial application on the basis of which the patent was granted, and the onus shall be on the owner of the patent to ensure that the requested change does not contravene this subsection.

### *Division 4.*

#### *Rights conferred by Patent and Duration of Patent.*

## **29. RIGHTS CONFERRED BY A PATENT.**

(1) The exploitation in Papua New Guinea of a patented invention by persons other than the owner of the patent is not permitted without the consent of the owner of the patent.

(2) The owner of a patent shall, in addition to any other rights, remedies or actions available to him have the right, subject to Subsection (4) and to Section 32, to institute proceedings in the Court against any person who –

- (a) infringes the patent by performing, without the agreement of the owner, any of the acts which amount to exploitation of a patented invention; or
- (b) performs an act which makes it likely that the patent will be infringed.

(3) Where the Court finds that a patent has been infringed, or is likely to be infringed, it may on the application of the owner of the patent or any other interest person, and in respect of any person –

- (a) grant an injunction, subject to such terms, if any, as the Court thinks fit; or
- (b) make an order for the inspection of any thing in or on any vehicle, vessel, aircraft, building or premises, and may impose such terms and give directions, if any, in relation to the inspection, as the Court thinks fit; or
- (c) award damages; or
- (d) order an account of profits.

(4) The rights of an owner of a patent shall not extend to –

- (a) acts in respect of articles which have been put on the market in Papua New Guinea by the owner of the patent or with his consent; or
- (b) the use of articles on, or in the construction or operation of, aircraft, land, vehicles or vessels of other countries which temporarily or accidentally enter the air space, territory or waters of Papua New Guinea; or
- (c) acts done only for experimental purposes relating to a patented invention; or
- (d) acts performed by any person who in good faith, before the filing of an application under Section 19 or, where priority is claimed, the priority date of the application on which the patent is granted, was exploiting the invention or was making effective and serious preparations for such exploitation in Papua New Guinea; or
- (e) acts performed by any person who proves that, at the date of any infringement of a patent, he was not aware, and had no reasonable grounds to believe, that a patent for the invention existed.

(5) The right of prior user referred to in Subsection (4)(d) may be transferred or devolved only together with the enterprise or business, or with that part of the enterprise or business, in which the exploitation or preparations for exploitation of the invention have been made.

### **30. ONUS OF PROOF IN ACTION FOR INFRINGEMENT OF PATENT.**

(1) In an action under Section 29 for the infringement of a patent, where the subject matter of the patent is a process for obtaining a product, the onus of establishing that a product was not made by the process shall be on the alleged infringer where the Court is satisfied that –

- (a) a substantial likelihood exists that the product was made by the process; and
- (b) the owner of the patent has been unable through reasonable efforts to determine the process actually used.

(2) In proceedings referred to in Subsection (1), the Court shall –

- (a) take into account the legitimate interest of the alleged infringer in not disclosing his manufacturing and business secrets; and
- (b) may make such orders and give such directions as it thinks fit in order to give effect to Paragraph (a).

### **31. DURATION OF PATENT AND ANNUAL FEES.**

(1) Subject to this section, a patent shall expire 20 years after the filing date of the application for the patent.

(2) In order to maintain a patent or a patent application, an annual fee as prescribed shall be paid in advance to the Registrar for each year, commencing one year after the filing date of the application for the grant of patent.

(3) The annual fee referred to in Subsection (1) may be paid up until six months after the date on which it became due provided that an additional fee as prescribed is also paid.

(4) Where the annual fee is not paid in accordance with the provisions of this section –

- (a) the patent shall lapse; or
- (b) the application for patent is deemed to have been withdrawn.

***Division 5.***

***Exploitation of Invention by Government or Person Authorized by Government.***

**32. EXPLOITATION BY GOVERNMENT OR PERSON AUTHORIZED BY GOVERNMENT.**

(1) Where –

- (a) the public interest, in particular, national security, nutrition, health or the development of other sectors of the national economy so requires; or
- (b) the Minister has determined that the manner of exploitation of a patented invention by the owner or his licensee is anti-competitive, and he is satisfied that the exploitation of a patented invention in accordance with this Division would remedy such practice,

the Minister may at the request of a Government agency or other person authorized, by notice in the National Gazette, the exploitation of the patented invention by the requesting agency or person predominantly for the supply of the market in Papua New Guinea, even without the agreement of the owner of the patent.

(2) The Minister may impose such terms and conditions on an authorization under Subsection (1) as he thinks fit.

(3) Subject to Subsection (5), prior to granting an authorization under Subsection (1), the Minister must be satisfied that the owner of the patent has received from the Government agency or person requesting the authorization, a request for a contractual licence, but that that Government agency or person has been unable to obtain such a licence on reasonable commercial terms and conditions and within a reasonable time.

(4) Subject to Subsection (5), the Minister shall not authorize the exploitation of the patented invention under Subsection (1) until he has given the owner of the patent and any other person known to the Minister to be an interested person, an opportunity to be heard, and where they wish to be heard, has heard them.

(5) Subsections (3) and (4) do not apply in cases of national emergency under Part X of the *Constitution* or in other circumstances of extreme emergency, but in such cases the owner of the patent shall be notified of the decision of the Minister as soon as is reasonably practicable.

(6) The exploitation of a patented invention which is authorized by the Minister under Subsection (1) shall –

- (a) be limited to the purpose for which the Minister authorized its use; and
- (b) be subject to payment to the owner of the patent of adequate remuneration as determined by the Minister; and
- (c) shall not exclude –
  - (i) the conclusion of licensing contracts by the owner of the patent; and
  - (ii) the continued exercise, by the owner of the patent, of his rights under Section 29(1).

(7) In determining the amount of compensation referred to in Subsection (6)(b), the Minister shall take into account –

- (a) the economic value of his decision under Subsection (1); and
- (b) where the decision has been taken under Subsection (1)(b), the need to remedy the anti-competitive practices.

**33. VARIATION OF TERMS OF DECISION AUTHORIZING EXPLOITATION OF A PATENTED INVENTION.**

(1) The Minister may, on the written request of –

- (a) the owner of the patent; or
- (b) the authorized Government agency or person; or
- (c) any other interested person,

in relation to a patented invention which is the subject of a decision by the Minister under Section 32(1), vary any terms or conditions of the decision authorizing the exploitation.

(2) Before varying any terms or conditions of an authorization the Minister shall hear such of the parties referred to in Subsection (1) as wish to be heard.

**34. TERMINATION OF AUTHORIZATION.**

(1) Subject to this section, the Minister may, on the written request of the owner of the patent or any other interested party, where is satisfied that –

- (a) the circumstances which led to his authorization under Section 32(1) have ceased to exist and are unlikely to recur; or

- (b) that the Government agency or person authorized by him has failed to comply with the terms of his authorization under Section 32(1),

terminate his authorization.

(2) The Minister shall not terminate an authorization where he is satisfied that the need for adequate protection of the legitimate interests of the Government agency or person authorized by him under Section 32(1) justify the maintenance of his authorization.

(3) Before terminating an authorization, the Minister shall hear such of the parties referred to in Section 32(1) as wish to be heard.

### **35. TRANSFER OF AUTHORIZATION.**

In the case of a person authorized by the Minister under Section 32(1), the authorization may only be transferred with the enterprise or business of that person, or with that part of the enterprise or business of that person within which the patented invention is being exploited.

### **36. APPEAL.**

An interested party may appeal to the Court against a decision of the Minister made under this Division.

## *Division 6.*

### *Invalidation of Patent.*

### **37. INVALIDATION OF PATENT.**

- (1) An interested person may request the Court to invalidate a patent.

(2) Where the person making a request under Subsection (1) proves to the satisfaction of the Court that –

- (a) the purported invention does not confirm to the definition of “invention” in Section 2; or
- (b) the purported invention does not confirm to the requirements of Sections 12, 13, 14 and 15; or
- (c) the owner of the patent is not the inventor or his successor in title,

the Court shall invalidate the patent and make such other orders as it thinks fit.

(3) A patent invalidated under Subsection (2), or a claim or part of a claim arising from a patent shall be regarded as null and void from the date of the grant of the patent.

(4) The person who made the request under Subsection (1) shall immediately notify the Registrar in writing of a decision of the Court to invalidate a patent, and the Registrar shall –



- (a) record it and make any necessary amendments to the Registrar of patents; or
- (b) as soon as practicable, publish the decision in the –
  - (i) National Gazette; and
  - (ii) the next issue of the journal referred to in Section 27(2)(c)

(5) The Registrar may require from the person who made the request any evidence of the decision of the Court under Subsection (2) that he thinks fit.

**PART 4. – INDUSTRIAL DESIGNS.*****Division 1.******General.*****38. REGISTRABLE INDUSTRIAL DESIGNS.**

(1) Subject to Subsection (2), an industrial design is registrable if it is new or original.

(2) An industrial design that –

- (a) is contrary to public order or morality; or
- (b) which serves solely to obtain a technical result and leaves no freedom as regards arbitrary features of appearance,

is not registrable.

**39. NEW OR ORIGINAL INDUSTRIAL DESIGNS.**

(1) An industrial design is new or original if it has not been disclosed to the public, anywhere in the world –

- (a) by publication in tangible form; or
- (b) by use; or
- (c) in any other way,

prior to the filing date, or, where applicable, the priority date of the application for registration.

(2) For the purposes of Subsection (1), disclosure to the public of an industrial design shall not be taken into consideration where –

- (a) it occurred within 12 months preceding the filing date or, where applicable, the priority date of the application; or
- (b) it was by reason of, or in consequence of, acts committed by the applicant or his predecessor in title, or of an abuse committed by a third party without regard to the applicant or his predecessor in title.

**40. RIGHT TO REGISTRATION OF INDUSTRIAL DESIGN.**

(1) The right to the registration of an industrial design belongs to the creator.

(2) Where two or more persons have jointly created an industrial design, the right to registration of that industrial design shall belong to them jointly.

(3) Where, and to the extent to which, two or more persons have created the same industrial design independently of each other, the person whose application for the registration of that industrial design has –

- (a) the earliest filing date; or

(b) where priority is claimed, the earliest validly claimed priority date, shall have the right to registration as long as the application is not withdrawn, abandoned or rejected.

(4) Where an industrial design is created in execution of an employment contract, the right to the registration shall belong, in the absence of contractual provisions to the contrary, to the employer.

#### **41. CREATOR TO BE NAMED IN REGISTRATION.**

(1) The creator shall be named in a registered industrial design unless, in a written declaration signed by him and addressed to the Registrar, he indicates that he wishes not to be named.

(2) A promise or undertaking made by a creator to any person to the effect that he will give a notice of the kind referred to in Subsection (1) is void and of no legal effect.

#### **42. ASSIGNMENT, ETC., OF RIGHT TO REGISTER INDUSTRIAL DESIGN.**

The right to the registration of an industrial design may be –

- (a) assigned in writing; or
- (b) transferred by succession.

### ***Division 2.***

#### ***Application of Registration of an Industrial Design.***

#### **43. APPLICATION TO REGISTER INDUSTRIAL DESIGN.**

(1) An application for registration of an industrial design shall be filed with the Registrar.

(2) An application under Subsection (1) –

- (a) shall contain –
  - (i) a request in the prescribed form; and
  - (ii) drawings, photographs or other adequate graphic representations of the article embodying the industrial design; and
  - (iii) an indication of the kind of products for which the industrial design is to be used; and
- (b) shall be accompanied by the prescribed fee.

(3) Where the applicant is not the creator the request shall be accompanied by a statement justifying the right of the applicant to the registration of the industrial design.

(4) The Registrar may, at any time prior to the registration of an industrial design, request in writing that an applicant provide a specimen of the article embodying the industrial design where the industrial design is two dimensional.

(5) Where an application is not accompanied by the prescribed fee the Registrar may refuse to receive it or accept it for filing and the application shall be treated as if it had not been filed.

(6) Two or more industrial designs may be the subject of the same application, provided they relate to the same class of the international classification or to the same set or composition of articles.

#### **44. WITHDRAWAL OF APPLICATION FOR INDUSTRIAL DESIGN.**

(1) An applicant may, at any time before the registration of an industrial design, withdraw the application by filing with the Registrar a notice in writing signed personally by the applicant.

(2) A notice filed under Subsection (1) is irrevocable.

#### **45. RIGHT OF PRIORITY FOR INDUSTRIAL DESIGNS.**

(1) An application under Section 43(1) may contain a declaration claiming a right of priority, as provided for in the Paris Convention, of one or more earlier national, regional or international applications filed by the applicant or his predecessor of the World Trade Organisation.

(2) Where an application contains a declaration under Subsection (1), the Registrar may request the applicant to furnish, within a time limit specified by the Registrar and in a manner directed by the Registrar, a copy of the earlier application certified as a true and correct copy by the authority or body with which it was filed.

(3) The effect of a declaration under Subsection (1) shall be as provided in the Paris Convention.

(4) Where the Registrar finds that the requirements of this section and any matters prescribed in relation to this section have not been fulfilled, the declaration is considered not to have been made.

#### **46. FILING DATE FOR INDUSTRIAL DESIGNS.**

(1) Subject to Section 43(5), where an application under Section 43 contains –

(a) indications allowing the identity of the applicant to be established; and

(b) the drawings, photographs or other adequate graphic representations of the article embodying the industrial design as required under Section 43(2)(a)(ii),

the Registrar shall record as the filing date the date of receipt of the application.

(2) Where the Registrar finds that an application under Section 43 did not, at the time of its receipt by him, contain the matters referred to in Subsection (1), he shall –

- (a) invite the applicant to file a correction within a time limit specified by the Registrar and in a manner directed by the Registrar; and
- (b) where the required correction is made in accordance with Paragraph (a), record as the filing date the date of receipt by the Registrar of the required correction; and
- (c) where the required correction is not made in accordance with Paragraph (a), treat the application as if it has not been filed.

#### **47. EXAMINATION OF INDUSTRIAL DESIGN.**

After recording a filing date under Section 46 for an application under Section 43 the Registrar –

- (a) shall examine whether the application complies with –
  - (i) the requirements of Section 43(2) and (3) and any Regulations pertaining thereto; and
  - (ii) Section 38(2)(a); and
- (b) where he is of the opinion that the application does not comply with the requirements of Paragraph (a) he may invite the applicant to file, within a time limit specified by the Registrar and in a manner directed by the Registrar –
  - (i) a correction or amendment; or
  - (ii) a submission as to whether the application complies with the requirements of Paragraph (a); or
  - (iii) both (i) and (ii),

and where after the expiration of the time limit specified by the Registrar, whether or not the applicant has responded to the invitation of the Registrar under this paragraph, the Registrar is still of the opinion that the application does not comply with the requirements of Paragraph (a) the Registrar shall refuse the application and notify the applicant in writing of his decision.

### ***Division 3.***

#### ***Registration of Industrial Designs.***

#### **48. REGISTRATION OF INDUSTRIAL DESIGN.**

(1) Where the Registrar is satisfied that the requirements of Section 47(a) have been met, he shall register the industrial design.

(2) The Registrar shall as soon as practicable after an industrial design has been registered –

- (a) record the industrial design in the Register of industrial designs; and
- (b) issue to the applicant a certificate of registration of the industrial design; and
- (c) publish a reference to the registration of the industrial design in a journal approved by the Minister by notice in the National Gazette.

***Division 4.***

***Rights Conferred by Registration of Industrial Designs and Duration of Registration.***

**49. RIGHTS CONFERRED BY REGISTRATION OF INDUSTRIAL DESIGN.**

(1) The exploitation in Papua New Guinea of a registered industrial design by a person other than the registered owner of the industrial design is not permitted without the consent of the registered owner of the industrial design.

(2) The registered owner of an industrial design shall, in addition to any other rights, remedies or actions available to him have the right, subject to Subsection (4), to institute proceedings in the Court against any person who –

- (a) infringes the registered industrial design by performing, without the agreement of the owner, any of the acts which amount to exploitation of a registered industrial design; or
- (b) performs an act which makes it likely that the registered industrial design will be infringed.

(3) Where the Court finds that a registered design has been infringed, or is likely to be infringed, it may on the application of the owner of the patent or any other interested person, and in respect of any person –

- (a) grant an injunction, subject to such terms, if any, as the Court thinks fit; or
- (b) make an order for the inspection of any thing in or on any vehicle, vessel, aircraft, building or premises, and may impose such terms and give such directions, if any, in relation to the inspection, as the Court thinks fit; or
- (c) award damages; or
- (d) order an account of profits.

(4) The rights of an owner of a registered industrial design shall not extend to –

- (a) acts in respect of articles which have been put on the market in Papua New Guinea by the owner of the registered industrial design or with his consent; or

- (b) acts performed by any person who in good faith, before the filing of an application under Section 43 was exploiting the industrial design or was making effective and serious preparations for such exploitation in Papua New Guinea; or
- (c) acts performed by any person who proves that, at the date of any infringement of a registered industrial design, he was not aware, and had no reasonable grounds to believe, that the industrial design was registered.

(5) The right of prior user referred to in Subsection (4)(b) may be transferred or devolved only together with the enterprise or business, or with that part of the enterprise or business, in which the exploitation or preparation for exploitation of the registered industrial design have been made.

#### **50. DURATION AND RENEWAL OF REGISTRATION OF INDUSTRIAL DESIGN.**

(1) Subject to this section, the registration of an industrial design shall expire five years after the filing date of the application for registration.

(2) The registration of an industrial design may be renewed for two further consecutive periods of five years by filing with the Registrar –

- (a) a request for renewal in the prescribed form; and
- (b) the prescribed renewal fee.

(3) The renewal fee referred to in Subsection (1) may be paid up until six months after the date on which it became due provided that an additional fee as prescribed is also paid.

(4) Where a registered industrial design is not renewed in accordance with Subsection (2) the registration of the industrial design shall lapse.

#### ***Division 5.***

#### ***Invalidation of Industrial Design.***

#### **51. INVALIDATION OF INDUSTRIAL DESIGN.**

(1) An interested person may request the Court to invalidate the registration of an industrial design.

(2) Where the person making a request under Subsection (1) proves to the satisfaction of the Court that –

- (a) the purported invention does not confirm to the definition of “industrial design” in Section 2; or
- (b) the purported industrial design does not confirm to the requirements of Sections 38 and 39; or
- (c) the registered owner of the industrial design is not the creator or his successor in title,

the Court shall invalidate the registration of the industrial design and make such other orders as it thinks fit.

(3) The registration of an industrial design invalidated under Subsection (2), or a claim or part of a claim arising from the registration of the industrial design shall be regarded as null and void from the date of the registration of the industrial design.

(4) The person who made the request under Subsection (1) shall immediately notify the Registrar in writing of a decision of the Court to invalidate the registration of the industrial design, and the Registrar shall –

- (a) record it and make any necessary amendments to the Register of industrial designs; and
- (b) as soon as practicable, publish the decision in the –
  - (i) National Gazette; and
  - (ii) the next issue of the journal referred to in Section 48(2)(c).

(5) The Registrar may require from the person who made the request any evidence of the decision of the Court under Subsection (2) that he thinks fit.



**PART 5. – MISCELLANEOUS.**

***Division 1.***

***Notification to the Registrar of Changes in Patent or Industrial Design.***

**52. CHANGES IN OWNERSHIP.**

(1) Where there is a change in the ownership of –

- (a) a patent; or
- (b) a registered industrial design; or
- (c) an application for the grant of a patent or the registration of an industrial design,

the new owner shall file with the Registrar, within one month of the change, a notice in the prescribed form.

(2) Upon receiving a notice under Subsection (1), and on proof to the satisfaction of the Registrar of the title of the of the new owner, the Registrar shall –

- (a) record the change by making alteration, amendment or addition to any document filed with him that he thinks fit; and
- (b) where a patent has been granted under Section 27(1) or an industrial design has been registered under Section 48(1) –
  - (i) make any necessary changes in the –
    - (A) Register of patents; or
    - (B) Register of industrial designs; and
  - (ii) publish notification of the change in the journal referred to in Section 27(2)(c) or Section 48(2)(c), whichever is applicable.

(3) A licensing agreement referred to in Subsection (1) shall have no effect against third parties without knowledge of the licence, until the Registrar has recorded the change and made any changes in accordance with Subsection (2)(a) and Subsection (2)(b)(i).

**53. LICENSING OF PATENT OR INDUSTRIAL DESIGN.**

(1) Where a person becomes entitled as licensee to an interest in a patent or a registered industrial design he shall within one month of becoming so entitled, file with the Registrar, a notice in the prescribed form.

(2) Upon receiving a notice under Subsection (1), and on proof to the satisfaction of the Registrar of the title of the licensee, the Registrar shall –

- (a) record the change by making any alteration, amendment or addition to any document filed with him that he thinks fit; and
- (b) where a patent has been granted under Section 27(1) or an industrial design has been registered under Section 48(1) –

- (i) make any necessary changes in the –
  - (A) Register of Patents; or
  - (B) Register of industrial designs; and
- (ii) publish notification of the change in the journal referred to in Section 27(2)(c) or Section 48(2)(c), whichever is applicable.

(3) A licensing agreement referred to in Subsection (1) shall have no effect against third parties without knowledge of the licence, until the Registrar has recorded the change and made any changes in accordance with Subsection (2)(a) and Subsection (2)(b)(i).

### ***Division 2.***

#### ***Agents.***

#### **54. AGENTS.**

(1) Where an applicant's ordinary residence and principal place of business are outside Papua New Guinea, an applicant under this Act shall be represented by a person ordinarily resident in Papua New Guinea, an applicant under this Act shall be represented by a person ordinarily resident in Papua New Guinea.

(2) An agent is deemed to be –

- (a) authorized to accept service in the country of documents on behalf of the applicant; or
- (b) responsible for filing with, or providing to, the Registrar any documents required by this Act to be filed or provided in respect of –
  - (i) the applicant; or
  - (ii) an application filed in respect to the applicant; or
  - (iii) a patent granted to the applicant or an industrial design registered to the applicant.

### ***Division 3.***

#### ***Jurisdiction of Court and Appeals.***

#### **55. JURISDICTION OF NATIONAL COURT.**

The National Court has jurisdiction with respect to matter arising under this Act.

#### **56. APPEALS.**

(1) A person who is aggrieved by an act or decision of the Registrar under this Act may appeal to the Court within one month after the date of notification of the act or decision, or within such further time as the Court may allow.

(2) Notice of an appeal under this Act to the Court from a decision of the Registrar shall, as soon as practicable, be given to the Registrar.

(3) The Registrar is entitled to appear and be heard upon the hearing of an appeal and shall appear where so directed by the Court.

(4) On hearing an appeal, the Court may approve the Registrar's act or decision or may give such directions or make such determination in the matter as the Court thinks fit.

(5) In this Division, Registrar includes any Deputy Registrar appointed under Section 4(1)(b).

**57. EXERCISE OF POWERS NOT AFFECTED BY APPEAL.**

Notwithstanding any other provision of any Act or any rule of law, where a person appeals or applies to the court in relation to an act or decision of the Registrar, until a decision on the appeal or application is given –

- (a) the Registrar may continue to exercise the powers under this Act as if no such appeal or application had been made; and
- (b) no person is excused from fulfilling an obligation under this Act by reason of that appeal or application.

*Division 4.*

*Court Proceedings and Offences.*

**58. INTERVENTION BY REGISTRAR IN INFRINGEMENT ACTION.**

In any action or proceedings in the Court for the infringement of a patent or a registered industrial design, the Court may grant to the Registrar leave to intervene.

**59. FALSE REPRESENTATIONS ABOUT PATENTS AND INDUSTRIAL DESIGNS.**

(1) A person shall not falsely represent that he or another person is the owner or licensee of a patent or industrial design.

(2) A person shall not falsely represent that an article or good sold by him –

- (a) is patented in Papua New Guinea, or is the subject of an application for a patent in Papua New Guinea; or
- (b) bears or embodies an industrial design which is registered.

(3) Without limiting Subsection (2)(a) –

- (a) a person is taken to represent that an article is patented in Papua New Guinea where the word “patent” or “patented”, the words “provisional patent”, or an other word or words implying that a patent for the article or good has been obtained in Papua New Guinea, are stamped, engraved or impressed on, or otherwise applied to, the article or good; and

- (b) a person is to be taken to represent that an article or good is the subject of an application or a patent in Papua New Guinea where subject of an application for a patent in Papua New Guinea where the words “patent applied for” or “patent pending”, or any other word or words implying that an application for a patent for the article or good has been made in Papua New Guinea, are stamped, engraved or impressed on, or otherwise applied to, the article or good.

(4) Without limiting Subsection (2)(b), a person is deemed to represent that an article or good bears or embodies an industrial design which is registered, where there are stamped, engraved, or impressed on or otherwise applied to the article or good the word “registered” or the words “design registered”, or any word or words expressing or implying that the design applied to the article has been registered.

- (5) A person, who contravenes a provision of this section, is guilty of an offence.

Penalty: A fine not exceeding K10,000.00

Default penalty: A fine not exceeding K1,000.00

#### **60. DISOBEDIENCE TO SUMMONS.**

(1) A person who has been summonsed to appear as a witness before the Registrar under Section 6(1)(a) shall not, without lawful excuse, fail to appear in answer to the summons.

(2) A person who has been required by the Registrar under Section 6(1)(c) to produce a document or article shall not, without lawful excuse, fail to produce the document or article.

(3) A person who appears before the Registrar as a witness shall not, without lawful excuse, refuse to be sworn or to make an affirmation, or to produce documents or articles, or to answer questions, that he is lawfully required to produce or answer.

- (4) A person who contravenes a provision of this section is guilty of an offence.

Penalty: A fine not exceeding K10,000.00

Default penalty: A fine not exceeding K1,000.00.

#### **61. GENERAL PENALTY.**

- (1) A person who –

- (a) does an act or thing that the person is prohibited to do by or under a provision of this Act; or
- (b) does not do an act or thing that the person is required or directed to do by or under a provision of this Act; or
- (c) otherwise contravenes a provision of this Act,

is guilty of an offence by virtue of this subsection, unless that or another provision of this Act provides that the person –

- (d) is guilty of an offence; or
- (e) is not guilty of an offence.

(2) A person who is guilty of an offence against this Act, whether by virtue of Subsection (1) or otherwise, is punishable, on conviction, by a penalty not exceeding the penalty applicable to the offence.

(3) Where a provision of this Act (other than this section) provides that the penalty applicable to a contravention of a particular provision of this Act is a specified penalty, pecuniary or otherwise, the penalty applicable to an offence constituted by a contravention of the particular provision is the specified penalty.

(4) Except as provided in Subsection (3) or in a provision of this Act (other than this section), a person who commits an offence is liable on conviction to a fine not exceeding K5,000.00.

## **62. PROSECUTIONS.**

(1) The Registrar or a person with the written consent of the Registrar may prosecute any offence against this Act.

(2) In any action or proceeding brought under this Act by the Registrar or against the Registrar the Court may award costs against any party or claimant other than the Registrar, which costs the Registrar may recover as a debt due to the Registrar.

(3) Any fine or penalty or any default fine or penalty to be paid by a person as a result of an action brought by the Registrar, or on behalf of the Registrar, shall be paid to the Registrar and, in addition to any other remedy, may be recovered by the Registrar as a debt due to the Registrar.

**PART 6. – REGULATIONS AND FEES.****63. REGULATIONS.**

The Head of State, acting on advice, may from time to time, make Regulations for all or any of the following purposes: –

- (a) prescribing forms for the purposes of this Act, and those Regulations may require –
  - (i) the inclusion in, or attachment to, forms of specified information or documents; and
  - (ii) forms to be signed by specified persons;
- (b) prescribing requirements, not inconsistent with this Act, with which documents submitted for registration shall comply;
- (c) prescribing the methods by which copies of documents may be certified for the purposes of this Act;
- (d) requiring persons to furnish to the Registrar documents in relation to an application under this Act;
- (e) prescribing matters necessary or convenient to be prescribed for the conduct of any business relating to the office and administration of the Registrar;
- (f) for the purpose of carrying out or giving effect to any international treaty to which Papua New Guinea is a party, which relates, whether directly or indirectly, to patents or industrial designs;
- (g) prescribing penalties for offences against, or breaches of the Regulations;
- (h) making such transitional or saving provisions as are necessary or convenient; and
- (i) providing for such other matters as are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act and for its due administration.

**64. FEES.**

- (1) The Regulations made under this Act may prescribe –
  - (a) fees or other amounts payable to the Registrar in respect of the performance of functions and the exercise of powers under this Act; and
  - (b) additional fees or amounts payable to the Registrar for failure to submit a document to the Registrar within the time prescribed by this Act; and
  - (c) fees or other amounts payable to the Registrar in respect of any other matter under this Act.

(2) Unless the contrary intention appears in this Act, the Registrar may refuse to register a document, perform a function, or exercise a power until the prescribed fee or amount is paid.

(3) A Regulation made under this Act may authorize the Registrar to waive, in whole or in part and on such terms and conditions as may be prescribed by the Regulations or the Registrar, payment of any fee or amount referred to in Subsection (1) by any person or class of person.

(4) A fee or amount payable to the Registrar is recoverable by the Registrar in any court of competent jurisdiction as a debt due to the Registrar.

Office of Legislative Counsel, PNG