

CHAPTER 314

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CHAPTER 314

PATENTS

An Act to repeal the Patents Act and to revise the law relating to patents in order to give effect to certain international conventions on patents and for related matters. 2001-18.
2006-2.

[6th August, 2001] Commence-
ment.

Citation

1. This Act may be cited as the *Patents Act*. Short title.

Interpretation

2. In this Act, Definitions.

“authorisation” means, in relation to the exploitation of an invention, an authorisation granted under section 49(1);

“claim” means, in relation to a description of an invention, a claim within the meaning of paragraph (c) of subsection (2) of section 17;

“Director” means the Registrar of Corporate Affairs and Intellectual Property;

"filing date",

- (a) in relation to an application for a patent made under this Act, means the filing date accorded that application under section 25;
- (b) in relation to an application for a patent made under this Act which is submitted with a claim under section 21 for priority of one or more earlier applications filed in a country that is a party to the Paris Convention, means the date accorded by the Director under section 25, having regard to sections 21 and 22; and

(c) in relation to an international application filed in accordance with the Patent Co-operation Treaty, means the date accorded that application under section 35;

"Gazette" means the *Official Gazette* or such other publication as is prescribed for the purpose;

Cap. 21A. "Intellectual Property Office" means the Corporate Affairs and Intellectual Property Office established under section 3 of the *Corporate Affairs and Intellectual Property Office Act*;

"licence-contract" means a licence-contract within the meaning of section 42;

"licensee" means

- (a) the holder of a licence under a licence-contract;
- (b) the holder of a non-voluntary licence; or
- (c) the Government or a third party authorised pursuant to section 49 to exploit an invention;

"non-voluntary licence" means a licence issued under section 50;

"Paris Convention" means the Paris Convention for the Protection of Industrial Property dated 20th March, 1883, as revised from time to time;

"Patent Co-operation Treaty" means the Patent Co-operation Treaty done at Washington on 19th June, 1970, as revised from time to time;

"priority date" means the date determined as such under section 21;

"register" means the register of patents described in section 64;

"transfer" includes every mode (whether direct or indirect, voluntary or involuntary, absolute or conditional) of disposing of or parting with any right vested under this Act or of any interest in any such right, including the retention of title to the right or interest as security for any obligation.

3. (1) Where the provisions of this Act conflict with those of the Patent Co-operation Treaty, the provisions of the Treaty shall prevail. Effect of Patent Co-operation Treaty.

(2) Where this Act does not provide for any matter provided for by the Patent Co-operation Treaty, the provisions of the Treaty shall apply.

4. (1) For the purposes of this Act, an invention is an idea that provides or enables a practical solution to a specific problem in technology. Inventions.

(2) An invention can be, or can relate to, a product or a process.

PART I

PATENTS

Protection of Inventions

5. (1) Subject to this Act, a patent granted under this Act for an invention vests in the owner of the patent the exclusive right Patent rights.

- (a) to prevent any other person from exploiting the patented invention without the consent of the owner;
- (b) to exploit the patented invention;
- (c) to assign or transmit the patent; and
- (d) to conclude licence-contracts.

(2) For the purposes of this Act, a patented invention is exploited when,

- (a) in relation to a patent granted in respect of a product,
 - (i) the product is made, imported, offered for sale, exposed for sale, sold or otherwise dealt with; or
 - (ii) the product is stocked for sale or for other purposes; or

- (b) in relation to a patent granted in respect of a process,
 - (i) the process is used; or
 - (ii) any of the acts described in paragraph (a) are done in connection with a product obtained directly from that process.

Limitations
of rights.

6. (1) The rights vested in the owner of a patent by section 5 in respect of any invention do not apply to

- (a) the use of the invention for scientific research only;
- (b) acts in relation to products that have been put on the market in Barbados by the owner of the product or with his consent;
- (c) acts performed by any person who in good faith, before the filing or, where priority is claimed, the priority date of the application on which the patent is granted in Barbados, was using the invention or was making effective and serious preparations for its use; or
- (d) the use of articles on a foreign vessel, or on a foreign aircraft or a foreign vehicle of any kind, that accidentally or temporarily enters the territorial sea, territorial airspace or territory of Barbados, if the invention is used exclusively for the needs of the vessel, aircraft or vehicle.

(2) The right of prior user referred to in paragraph (c) may be transferred or may devolve by operation of law only with the enterprise or business, or with that part of the enterprise or business, in respect of which the invention was used or preparations for its use were made.

Qualification for Patent

Patentability
criteria.

7. A patent may be granted under this Act for an invention if the invention is novel, involves an inventive step and is industrially applicable.

8. (1) For the purposes of section 7, an invention is novel if it is not anticipated by prior art. Novel invention.

(2) In relation to an invention, prior art for the purposes of subsection (1) consists of everything disclosed about the invention to the public anywhere in the world

(a) by publication in tangible form or by oral disclosure; or

(b) by any other means

prior to the filing date or, as the case may be, the priority date, of the publication claiming the invention.

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

(a) if it occurred within 12 months preceding the filing date or, where applicable, the priority date of the application; and

(b) if it was the result of acts by the applicant or acts by his predecessor in title or the result of an abuse by a third party with regard to the applicant or his predecessor in title.

9. For the purposes of section 7, an invention involves an inventive step when, having regard to the prior art at the time that an application is made for a patent for that invention, the invention is not obvious to a person having ordinary skill in the art. Inventive step.

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

(2) For the purposes of this section, “industry” refers to industry of every kind, and includes handicraft, agriculture, fishery and services.

11. (1) Whether or not they constitute an invention within the meaning of this Act, the following are not patentable under this Act, namely: Unpatentable inventions.

(a) discoveries, scientific theories and mathematical methods;

- (b) schemes, rules or methods for
 - (i) the carrying on of business;
 - (ii) the performing of acts of a mental nature only; or
 - (iii) the playing of games;
- (c) methods for treatment of human beings or animals by surgery or therapy;
- (d) diagnostic methods practised on human beings or animals;
- (e) plant varieties, animal varieties and essentially biological processes for the production of plants other than micro-biological processes and the products of those processes; or
- (f) an invention, the commercial exploitation of which would be contrary to public order or morality or which is prejudicial to human or animal health or to plant life or to the environment.

(2) Paragraphs (c) and (d) of subsection (1) do not extend to products invented for use in the methods referred to in those paragraphs.

Inventor's
right to
patent.

12. (1) Subject to sections 13 and 14, the right under this Act to a patent for an invention vests in the inventor.

(2) Where 2 or more individuals are joint inventors of an invention, the right to a patent under this Act for that invention vests in them jointly.

(3) Where 2 or more persons have made the invention independently of each other, the person whose application has the earliest filing date or, 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) The inventor shall be named as such in the patent unless by written declaration signed by him he declares that he does not wish to be named.

13. An employee of the Intellectual Property Office is during the period of his employment in that office and for one year thereafter disqualified

Disqualified inventor.

- (a) from making any application for a patent of invention under this Act;
- (b) from being granted a patent of invention under this Act; and
- (c) from holding any rights relating to any patent of invention.

14. (1) Subject to any enactment relating to contracts of employment or to the terms of any specific contract of service or contract for services, when an invention is invented by an individual

Employee invention.

- (a) in the course of his employment by the Crown, a body corporate or another individual; or
- (b) under a contract for services with, or as a work commissioned by, the Crown, a body corporate or another individual,

then, in respect of that invention, the right to a patent of invention for that invention vests in the Crown, body corporate or other individual who employed the inventor or commissioned the invention, as the case requires.

(2) Notwithstanding subsection (1), when an employee under a contract of service who is not required to engage in any creative activity invents an invention by the use of information or by means that his employer put at the employee's disposal, the right to a patent of invention for that invention vests, subject to section 15, in the employee.

15. (1) An employee who invents an invention in the circumstances described in subsection (2) of section 14 shall forthwith submit a written report concerning the invention to his employer.

Employer's right.

(2) Where an employer receives a report concerning an invention of an employee under subsection (1), the employer shall, if he is interested in the invention reported upon, serve on the employee,

within a period of 120 days from the date the employer received the report or from the date the invention became known to him, whichever is the later date, a written statement of the employer's interest in the invention.

(3) Upon the service upon his employee of a written statement of the employer's interest in the invention, the right to a patent of invention for that invention vests in the employer.

(4) An employee referred to in subsection (3) is entitled to remuneration calculated after due regard is given to the amount of his salary, the economic importance of his invention and any benefits accruing to the employer as a result of the invention.

(5) Where the employer and employee fail to agree on the amount of the remuneration under subsection (4), it must be fixed by the High Court in accordance with the provisions of that subsection.

Effect of
employee
contracts.

16. Any contract between an employer and an employee in relation to an invention to which section 15 applies that is less beneficial to the employee than the provisions of that section is voidable at the instance of the employee.

Application for Patent

Patent
application.

17. (1) An application for a patent for an invention must be made to the Director and is subject to the prescribed fee.

(2) An application must be in the prescribed form and must contain

(a) a petition as described in section 18;

(b) a description of the invention for which the patent is requested

(i) that is sufficiently clear and complete to enable the invention to be evaluated and tested by a person having ordinary skill in the art; and

(ii) that indicates at least one mode known to the applicant for using the invention;

- (c) subject to subsection (4), one or more claims, and for that purpose a claim is a statement of terms defining the invention for which the application for a patent is being made and setting out the scope of the protection desired under the patent when it is granted;
- (d) such drawings of the invention as are required to assist in the understanding of the invention; and
- (e) subject to subsection (3), an abstract providing for any necessary technical information relating to the invention for which the patent is requested.

(3) An abstract contained in an application for a patent may not be used for the purpose of ascertaining the scope of the protection desired.

(4) For the purposes of an application, claims must be clear and precise, and be fully supported by the description given pursuant to subsection (2); and in interpreting a claim reference may be had to the description and any drawings contained in the application.

(5) An applicant for a patent must be represented by an agent admitted to practice as a patent agent in Barbados.

(6) An application under this Act for a patent for an invention may not be refused, nor is any patent granted therefor invalid, by reason only that an act performed in connection with the invention to which the patent relates is prohibited by law, unless that act is one that is likely to provoke a breach of the peace.

18. (1) The petition for a patent of invention must contain a Petition. request that a patent be granted for the specific invention and include

- (a) the name of the applicant and other prescribed information relating to the applicant;
- (b) the name of the inventor of the invention and of the agent, if any, who is representing the applicant; and

(c) the title by which the invention is to be known.

(2) If the applicant for a patent is not the inventor of the invention for which the patent is requested, the petition must be accompanied by a statement justifying the applicant's right to a patent for that invention.

(3) When a petition for a patent contains a statement required under subsection (2), the Director shall send a copy of the statement to the inventor, who

(a) may inspect the application; and

(b) may, at his own expense, and exclusively for his own purposes, acquire from the Director a copy of the application.

Unity of
invention.

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

Altering
application.

20. (1) An applicant for a patent may

(a) amend his application if the amendment does not alter the disclosure contained in his prior application; or

(b) divide his application into one or more applications, to be known as "divisional applications", if each divisional application does not go beyond the disclosure contained in the prior application.

(2) Each divisional application shall be entitled to the filing date and, where applicable, the priority date of the initial application.

(3) Where a prior application is divided into divisional applications, each divisional application must be assigned a filing date, which, if appropriate, may be the filing date of the prior application that they replace; and separate fees shall be paid on the divisional application.

(4) The fact that a patent has been granted on an application that did not comply with the requirement of unity of invention under subsection (1) is not grounds for the invalidation of the patent.

21. (1) An applicant for a patent may, pursuant to the Paris Convention, claim, by means of a declaration contained in the application, the priority of one or more earlier applications that were filed by the applicant or a person through whom he claims in a country that is a party to that Convention. Priority claim.

(2) Where an applicant for a patent claims a priority under subsection (1), the Director may require that the applicant furnish, within the prescribed period, a copy of the earlier application on which his claim is based, which must be certified as correct by the competent authority of the office in the country in which that earlier application was filed.

(3) A claim of priority for an application under subsection (1) has effect as provided in Article 4 of the Paris Convention.

(4) The Minister may with a view to the fulfilment of a treaty, an international convention or an arrangement declare by order that any country specified in the order is a convention country for the purposes of this section.

22. (1) Where the Director is of the opinion that an applicant who claims priority under an earlier application pursuant to section 21 has not complied with any requirement that ought to have been complied with under that section or the regulations, the Director shall require the applicant to make such corrections as are necessary for the requirement to be complied with. Non-compliance.

(2) If the applicant fails to file the necessary corrections to his application with the Director within the time limited therefor under subsection (1), the claim of priority shall be deemed to be invalid, and the application shall be treated as if it had not been filed with a claim of priority.

23. (1) An applicant for a patent shall, at the request of the Director, furnish the Director with Information on corresponding foreign applications.

- (a) the date and number of any other application for a patent or other title of protection made in an industrial or intellectual property office of any other country, or within a regional industrial or intellectual property office, in this section called a “foreign application”, relating to the same or essentially the same invention as that claimed in the application filed with the Director;
- (b) the following documents relating to foreign applications:
 - (i) a copy of any communication received by the applicant concerning the result of any search or examination carried out in respect of the foreign application;
 - (ii) a copy of the patent granted on the basis of the foreign application; and
 - (iii) a copy of any final decision rejecting the foreign application or refusing the patent requested in the foreign application; and
- (c) a copy of any final decision invalidating the patent granted on the basis of the foreign application referred to in paragraph (b).

(2) The Director may not request the documents specified under sub-paragraphs (i) and (iii) of paragraph (b) of subsection (1) where the Intellectual Property Office has received an international preliminary examination report in accordance with the Patent Co-operation Treaty.

- (3) Documents furnished pursuant to subsection (1)
 - (a) shall, if not in English, be accompanied by a translation thereof in English certified by the translator as being to the best of his knowledge complete and faithful; and
 - (b) may be used only for facilitating the evaluation of the novelty and inventive step of the invention for which the patent application is made.

24. An applicant for a patent may withdraw his application at any Withdrawal. time before the patent is granted.

25. (1) Subject to section 35 and to this section, the date of filing Filing date. an application for a patent shall be the earliest date on which the following information and documents are submitted in respect of the application:

- (a) the name of the applicant;
- (b) the name and address of the inventor and, if the applicant is not the inventor, the statement referred to in subsection (2) of section 18, as the case requires;
- (c) a part that on its face appears to be a description of the invention as required by subsection (2) of section 17; and
- (d) a part that on its face appears to be a claim as required by subsection (2) of section 17.

(2) Where an application for a patent is submitted together with a declaration under section 21 claiming the priority of one or more earlier applications made in a country that is a party to the Paris Convention, the Director shall, subject to this section and to sections 21 and 22, accord a date of filing to the application that is equivalent to the earliest priority date on which the application was filed.

(3) Where the Director is satisfied that, at the time an application for a patent was received by him, the requirements of subsection (1) had not been complied with, the Director shall require the applicant for the patent to make such corrections as are necessary to bring the application into compliance with those requirements within a specified time.

(4) When an applicant referred to in subsection (2) complies with a request made under that subsection, the filing date of his application is the date on which the correction was made; but, if the applicant does not not comply with the request within the time specified, the applicant shall be deemed to have abandoned his application and the application shall be treated as if it had not been filed.

(5) When an application for a patent makes a reference to drawings that are not included in the application, the Director shall request the applicant to furnish him with those drawings.

(6) When an applicant complies with a request made under subsection (4), the filing date of his application is the date on which the drawings were furnished to the Director.

(7) When an applicant fails to comply with a request made under subsection (4), the filing date of his application is the date the patent application was received by the Director; but the reference in that application to drawings must be disregarded.

Examination
as to form.

26. (1) Where an application has been accorded a filing date, upon payment of the prescribed fee, the Director shall examine each application for a patent of invention to determine

- (a) whether subsection (4) of section 17, if applicable, has been complied with;
- (b) whether the requirements concerning the petition in the application are in compliance with section 18 and the regulations;
- (c) whether the requirements of subsection (2) of section 18 have been complied with, if applicable;
- (d) whether the description, claims and, if applicable, drawings comply with the prescribed physical requirements for descriptions, claims and drawings; and
- (e) whether the application contains an abstract.

(2) If, the Director determines that any requirement mentioned in subsection (1) has not been complied with, he shall require the applicant to make such corrections in his application as are necessary to comply with that requirement; and, if an applicant fails to make the required corrections, the Director shall, subject to subsection (3), refuse to grant the patent requested by the application.

(3) Where the correction required by the Director is the filing of an abstract, the Director may, upon payment of the prescribed fee, prepare the abstract for the application; but if the prescribed fee for an abstract remains unpaid after the expiration of the time prescribed for its payment, the Director shall refuse the requested patent.

(4) When a patent is refused under this section, notice of the refusal and the reasons therefor shall be communicated to the applicant by the Director as soon as practicable.

27. (1) The Director shall examine each application for a patent of invention to determine Examination as to substance.

- (a) whether the invention is an invention within the meaning of this Act;
- (b) whether the invention is patentable within the meaning of sections 7 to 10;
- (c) whether the invention is excluded from patentability under section 11;
- (d) whether the description and the claims for the invention are in compliance with the requirements of subsection (2) of section 17 and the regulations;
- (e) whether any drawings necessary for the understanding of the invention have been furnished in accordance with subsection (2) of section 17;
- (f) whether the application complies with the requirements of this Act and the regulations regarding unity of invention;
- (g) whether, if applicable, any amendment or any divisional application goes beyond the disclosure in the prior application as provided in section 20;
- (h) whether the application has complied with any requirement made by the Director under section 22;

(i) whether the description and the claims for the invention are in compliance with the requirements of subsection (2) of section 17 and the regulations.

(2) If the Director determines that any requirement mentioned in subsection (1) has not been complied with in respect of an application, the Director shall notify the applicant accordingly and invite the applicant to submit any comments the applicant wishes to make regarding his failure to comply with that requirement; and an invitation made to an applicant under this section may include an invitation to amend or divide the application.

(3) Where, notwithstanding any comment, amendment or division of the application submitted to the Director by the applicant, the Director is of the opinion that a requirement mentioned in subsection (1) has not been complied with, the Director may refuse to grant a patent on that application; but any refusal to grant a patent and the reasons therefor must be communicated to the applicant in writing by the Director as soon as practicable.

(4) For the purposes of examination under subsection (1), the Director shall take into account

(a) the results of any international search and any International preliminary examination report submitted in accordance with the Patent Co-operation Treaty;

(b) any document submitted under paragraph (i) or (iii) of section 23(1)(b); or

(c) a search and examination report which was carried out upon the request of the Director by an external search and examination authority pursuant to subsection (5).

(5) For the purposes of the examination under this section the Director may transmit the application to a duly authorised authority with which an arrangement to that effect has been made by the Minister.

Grant and Surrender of Patent

28. (1) After all the requirements of this Act have been complied with in the case of an application for a patent, the applicant is entitled, on payment of the prescribed fee, to a patent. Grant of patent.

(2) In granting a patent the Director shall

(a) publish a notice of the grant of the patent in the *Gazette*;

(b) issue a patent in the prescribed form to the applicant therefor;

(c) if applicable, make a copy of the patent available for any patent information service established by the Government; and

(d) make copies of the patent available to any member of the public who pays the prescribed fee therefor.

(3) The effective date of a patent granted under this Act is the date that the notice of the grant of the patent is published in the *Gazette* pursuant to subsection (2).

(4) The patent information service referred to in subsection (2)(c) shall make available for use by the public, in such manner as may be approved by the Director, and on payment of any fee that may be prescribed, patent literature and relevant non-patent literature, including all patent documents relating to patents granted in Barbados and such patent documents relating to foreign patents as are available.

29. (1) Subject to subsection (2), a patent expires 20 years after the filing date accorded the application for that patent under section 25 or section 35 as the case may be. Duration of patent.

(2) In order to maintain a patent or patent application, the prescribed annual fee shall be paid in advance to the Director for each year, starting one year after the filing date of the application for the grant of the patent and, in the case of an international application, one year after a national application for a patent has been made.

(3) A grace period of 6 months shall be allowed for the late payment of the annual fee on payment of the prescribed surcharge.

(4) Where the annual fee is not paid in accordance with this section, the patent application shall be deemed to have been withdrawn or, as the case may be, the patent shall be deemed to have been surrendered.

Surrender of patent. **30.** (1) The owner of a patent may surrender the patent by submitting to the Director a surrender in writing of that patent.

(2) A surrender under subsection (1) may be limited to one or more claims of invention in the patent to which the surrender relates.

Saving. **31.** Where a statutory licence has been issued under this Act in respect of a patent for which a surrender of patent is made under section 30, the patent may only be surrendered under that section if

- (a) the owner of the patent submits to the Director a statement in writing signed by the licensee under the statutory licence that he consents to the surrender of the patent; and
- (b) the Director is satisfied that circumstances exist that justify the surrender of the patent.

Recording surrender. **32.** The Director shall record the surrender of a patent in the register and publish a notice of the surrender in the *Gazette* as soon as possible, and communicate notice of the surrender to all interested persons.

Effect of surrender. **33.** The surrender of a patent shall take effect on the day following the receipt by the Director of the written statement of surrender of the patent.

PART II

INTERNATIONAL APPLICATIONS UNDER THE
PATENT CO-OPERATION TREATY

34. In this Part the expressions

Interpreta-
tion.

(a) "designated office";

(b) "elected office";

(c) "international application";

(d) "International Bureau"; and

(e) "receiving office"

have the same meanings as in the Patent Co-operation Treaty.

35. (1) An international application designating Barbados shall, subject to this Part, be treated as an application for a patent filed under this Act having as its filing date the international filing date accorded under the Patent Co-operation Treaty.

Filing date
of interna-
tional
application.

(2) Any international application under the Patent Co-operation Treaty designating Barbados, filed between 12th March 1985 and the commencement of this Act, fulfilling the requirements under that Treaty and being accorded an international filing date, shall be treated as a patent application under this Act as of the international filing date, which date shall be considered to be the actual filing date in Barbados.

36. (1) The International Bureau shall, subject to subsection (2), act as the receiving office in respect of any international application filed with it by a resident or national of Barbados.

International
Bureau as
receiving
office.

(2) The Minister may enter into an agreement of the kind referred to in Rule 19.1(b) of the Regulations made under the Patent Co-operation Treaty, authorizing an intergovernmental organisation or the national office of another Contracting State which

is a party to the Patent Co-operation Treaty, to act instead of the International Bureau as receiving office for applicants who are residents or nationals of Barbados.

Filing of international applications with the International Bureau. **37.** An international application filed with the International Bureau as receiving office must be filed in the prescribed language and the prescribed transmittal fee shall be paid to the International Bureau.

Intellectual Property Office as designated office. **38.** The Intellectual Property Office shall act as the designated office in respect of an international application in which Barbados is designated for the purposes of obtaining a national patent under this Act.

Intellectual Property Office as elected office. **39.** The Intellectual Property Office shall act as the elected office in respect of an international application in which Barbados is designated for the purposes of obtaining a national patent, if the applicant elects Barbados for the purposes of international preliminary examination under the Patent Co-operation Treaty.

National processing. **40.** The Intellectual Property Office as designated office or elected office shall not commence the processing of an international application designating Barbados before the expiration of the period referred to in section 41, unless the applicant complies with the requirements of that section and files with the Intellectual Property Office an express request for early commencement of such processing.

Entering national phase. **41.** (1) The applicant in respect of an international application designating Barbados shall, before the expiration of the time limit applicable under Article 22 or 39 of the Patent Co-operation Treaty or of such later time limit as may be prescribed in the Regulations,

(a) where the application is not in English, file a translation into English at the Intellectual Property Office; and

(b) pay the prescribed fee.

(2) Where the applicant fails to comply with subsection (1), the application shall be deemed to have been withdrawn.

PART III

VOLUNTARY LICENCES

Licence-Contracts

42. (1) Subject to this Part, the applicant for a patent or the owner of a patent may, by a licence-contract, grant to another person or to an enterprise a licence to use the invention to which the application or patent relates. Licence-contracts.

(2) A licence-contract must be in writing and signed by the parties to the contract, and it is void against persons other than the parties thereto until it is registered.

(3) Subject to this Part, upon payment of the prescribed fee, a licence-contract shall be registered in the register.

(4) The registration of a licence-contract relating to an invention shall be cancelled by the Director

- (a) at the request of the applicant for a patent or the owner of a patent; and
- (b) on production to the Director of satisfactory evidence by the person making the request that the licence-contract has terminated.

(5) When, in the economic interests of Barbados, the Minister responsible for Finance so provides by order,

- (a) licence-contracts requiring payment of royalties abroad or such classes thereof as are described in the order; and
- (b) changes or renewals of the licence-contracts referred to in paragraph (a),

have no effect in Barbados without the approval in writing of the Minister responsible for Finance.

- Further licence. **43.** In the absence of a provision to the contrary in a licence-contract, but subject to section 44, the grant of a licence to a person to use an invention in industry or commerce does not prevent the grantor of the licence
- (a) from granting further licences to other persons to use the invention; or
 - (b) from using the invention himself.
- Licensee right. **44.** In the absence of a provision to the contrary in the licence-contract, and subject to section 45 the licensee may, while he is a registered licensee under the contract, exercise in Barbados, in relation to the invention to which the licence-contract relates, all the rights vested under this Act in respect of that invention.
- Transfers. **45.** (1) Unless the licence-contract otherwise provides, a licence under a licence-contract is not transferable nor may a licensee thereunder grant a sub-licence.
- (2) Where a licensee under a licence-contract has authority thereunder to transfer his licence or to grant a sub-licence, sections 42 to 44 and section 46 apply to the transfer or sub-licence.
- Registration of contract. **46.** (1) Any licence-contract relating to a patent or an application therefor shall be submitted to the Director, who shall keep its contents confidential but shall record the contract in the register and publish a notice thereof in the *Gazette*.
- (2) A licence-contract referred to in subsection (2) does not affect third parties until a record is made of it in the register.
- Staff. **47.** An employee of the Intellectual Property Office is, during the period of his employment in that Office and for one year thereafter, disqualified from being a transferor or a transferee under a licence-contract.

48. A contract that is in effect on the commencement of this Act continues in effect for 2 years from that date unless an application for registration of that contract is made to the Director under this Part within that time and the contract is registered under this Part.

Saving for certain contracts.

PART IV

USE BY GOVERNMENT AND NON-VOLUNTARY LICENCES

Use by Government or third party

49. (1) Where

- (a) the exploitation within Barbados of an invention protected by patent is, in the opinion of the Minister, necessary
- (i) in the interests of national security;
 - (ii) in the interests of national health;
 - (iii) in the interests of national nutrition;
 - (iv) in the interests of the development of an essential sector of the economy of Barbados; or
 - (v) for other public interests;
- (b) the High Court has determined that the manner of exploitation by the owner of a patent or his licensee is anti-competitive,

Exploitation by Crown, government agency or person named.

the Minister may, without the consent of the owner of the patent, but subject to the payment of a reasonable amount for its exploitation, authorize by order the exploitation of the invention in Barbados by the Crown, by a government agency or by any person named in the order.

(2) Before the Minister makes an order under subsection (1),

- (a) the views of the Director must be obtained regarding the use of the invention;

(b) the owner of the patent for the invention, and, where there is a licence-contract, his licensee, must be notified of the Minister's intention to make an order under subsection (1).

(3) All persons who have been notified under subsection (2), and any other interested persons shall, together with any person whose participation the Minister considers desirable, be invited by the Minister to a hearing concerning authorisation of the exploitation of the invention.

(4) In determining a reasonable amount of payment under subsection (1), the Minister shall take into account the economic value of the use of the patented invention and the need to correct anti-competitive practices.

(5) A request for the Minister's authorisation must be accompanied by evidence that the owner of the patent has received, from the person seeking the authorisation, a request for a contractual licence, but that that person has been unable to obtain such a licence on reasonable commercial terms and conditions and within a reasonable time.

(6) The following exceptions are applicable:

(a) subsections (2), (3) and (5) do not apply where a state of emergency has been declared pursuant to any enactment, or in other circumstances of extreme national urgency, but in any such case, the owner of the patent shall be notified of the Minister's decision as soon as reasonably practicable;

(b) subsection (5) does not apply where the use is for public non-commercial purposes; and

(c) subsection (3) does not apply where the High Court has determined that the manner of exploitation by the owner of a patent or his licensee is anti-competitive.

(7) The exploitation of a patented invention in the field of semiconductor technology shall only be authorised either for public non-commercial use or where the High Court has determined that the

manner of exploitation of the patented invention, by the owner of the patent or his licensee, is anti-competitive and if the Minister is satisfied that the grant of the authorisation would remedy such practice.

(8) The authorisation shall not exclude

- (a) the conclusion of licence-contracts by the owner of the patent; or
- (b) the continued exercise by the owner of the patent of his rights under section 5(2).

(9) Where a third party has been designated by the Minister, the authorisation may only be transferred with the enterprise or business of that party or with the part of the enterprise or business within which the patented invention is being exploited.

(10) The exploitation of the invention by the Crown, government agency or third person referred to in subsection (1), shall be predominantly for the supply of the market in Barbados and shall be limited to the purposes for which it was authorised.

(11) The Minister may, upon the request of the owner of the patent, the Crown, government agency or the third person referred to in subsection (1), after hearing the parties, if any or both of them wish to be heard, vary the terms of the decision authorising the exploitation of the patented invention, to the extent that changed circumstances justify such variation.

(12) Upon the request of the owner of the patent, the Minister shall terminate the authorisation if he is satisfied, after hearing the parties, if any or both of them wish to be heard, that the circumstances which led to his decision have ceased to exist and are unlikely to recur, or that the Crown, government agency or third person referred to in subsection (1) has failed to comply with the terms of the decision.

(13) Notwithstanding subsection (12), the Minister shall not terminate the authorisation if he is satisfied that the need for adequate protection of the legitimate interests of the Crown, government agency or third person justifies the maintenance in force of the decision.

(14) A person aggrieved by a decision of the Minister under subsection (1), (11) or (12) may appeal to a Judge in chambers.

Non-voluntary licences

Non-voluntary licences.

50. (1) After the expiration of a period of 4 years from the date of filing of the patent application or 3 years from the date of the grant of the patent, whichever period expires last, any person interested may apply to the High Court for the grant of a non-voluntary licence under a patent, on the ground that the patented invention is not exploited or is insufficiently exploited by working the invention locally or by importation in Barbados.

(2) Notwithstanding subsection (1), a non-voluntary licence shall not be issued if the owner of the patent satisfies the High Court that circumstances exist which justify the non-exploitation or insufficient exploitation of the patented invention in Barbados.

(3) The High Court shall make an order setting out

- (a) the scope and function of the licence;
- (b) the time limit within which the licensee shall begin to exploit the patented invention; and
- (c) the amount to be paid to the owner of the patent and the conditions of payment.

(4) Any person to whom a licence is granted under this section, shall exploit the patented invention in Barbados in accordance with the terms of the order under subsection (3), and shall exploit the patented invention sufficiently.

(5) Where

- (a) the invention claimed in a patent (in this section referred to as the “later patent”) cannot be exploited in Barbados without infringing a patent granted on the basis of an application benefiting from an earlier application (in this section referred to as the “earlier patent”); and

- (b) the invention claimed in the later patent involves an important technical advance of considerable economic importance in relation to the invention claimed in the earlier patent,

the High Court may, upon the request of the owner of the later patent, issue a non-voluntary licence to the extent necessary to avoid infringement of the earlier patent.

(6) Where a non-voluntary licence is granted under subsection (5), the High Court shall, upon the request of the owner of the earlier patent, issue a non-voluntary licence in respect of the later patent.

(7) In the case of the grant of a non-voluntary licence under subsection (5), subsection (3) applies, *mutatis mutandis*, with the exception that no time limit need be fixed.

(8) In the case of a non-voluntary licence issued under subsection (5), the transfer may be made only with the later patent, or, in the case of a non-voluntary licence granted under subsection (6), only with the earlier patent.

(9) A licence granted under this section

(a) is not exclusive;

(b) shall not be assigned otherwise than in connection with the goodwill of the business in which the patented invention is used; and

(c) is limited to the supply of the patented invention predominantly in Barbados.

(10) Where the High Court is satisfied that the grounds on which any licence granted under this section have ceased to exist, it may, on the application of any interested party, terminate such licence.

(11) Any person to whom a licence is granted under this section shall pay such remuneration to the owner of the patent as may be agreed, or as may be determined by a method agreed upon between that person and the owner of the patent or, in default of agreement, as is determined by the High Court on the application of either party.

(12) A licence shall not be granted under this section unless the person applying for the licence, having taken all reasonable steps to do so, has been unable to obtain a licence or to obtain a licence on reasonable terms from the owner of the patent.

(13) A licence shall not be granted under this section in respect of a patent relating to an integrated circuit.

(14) A non-voluntary licence granted under this section is subject to payment of the prescribed fee.

PART V

LEGAL PROCEEDINGS

Appeals

Appeal
against
decision or
act of
Director.

51. (1) Where any person is aggrieved by any decision or act of the Director, that person may

- (a) within the time provided by a provision of this Act therefor;
- (b) within 3 months from the day he became aware of the decision or act; or
- (c) within such further time as the High Court may allow in accordance with rules of court,

appeal against the decision or act to the High Court.

(2) An appeal to the High Court under this Act may be brought by a notice of motion.

(3) Rules of court shall make provision for the appointment of advisers to assist the High Court in proceedings under this Act, for regulating the functions of such advisers and for the payment to them of such remuneration as the High Court may determine from time to time.

Infringement proceedings

52. (1) Subject to the provisions of this Part, proceedings may be brought in the High Court by the owner of a patent in respect of any act that infringes the patent, and in those proceedings a claim may be made

Infringement proceedings.

- (a) for an injunction to prohibit the infringement or to prohibit the continuation of the infringement; or
- (b) for damages for the infringement;
- (c) for an order for the defendant to deliver up or destroy any product in relation to which the patent is infringed or any article in which that product is inextricably comprised;
- (d) for an account of the profits derived by the defendant from the infringement;
- (e) for a declaration that the patent is valid and has been infringed by the defendant.

(2) The High Court shall not in respect of the same infringement both award the owner of the patent damages and order that he shall be given an account of the profits.

(3) A defendant in proceedings instituted under this section to protect a patent may, in those proceedings, apply to the Court for an order declaring the patent invalid; and sections 56, 57 and 58 shall apply to the proceedings as it relates to the application of the defendant.

(4) A person is liable to pay reasonable compensation to the owner of a patent and to any person claiming under the owner of a patent for any damage sustained by the owner or by any person claiming under him by reason of any act on the part of that person

- (a) after the application for that patent was accorded a filing date in accordance with this Act; and
- (b) before the grant of the patent,

if that act would have constituted an infringement of the patent, had the patent been granted on the day the application was accorded a filing date.

Transfer by
High Court.

53. (1) Subject to subsection (2), where the essential elements of an invention claimed in an application for a patent, or in a patent granted under this Act, are unlawfully derived from an invention for which the right to a patent is vested in another person, that other person may apply to the High Court for an order transferring to him the application or patent, as the case requires.

(2) An application under subsection (1) may not be brought after the expiration of 5 years from the date of the grant of a patent.

Licensee's
rights.

54. (1) A licensee may in writing request the owner of a patent for the invention to which the licence relates to institute, within a period of 90 days from the receipt by him of the request, any necessary legal proceedings in respect of any infringement or imminent infringement of the patent.

(2) A request under subsection (1) must contain a statement of the relief desired.

(3) Subject to section 55 and to subsection (5), if the owner of the patent who receives a request under subsection (1) fails to institute legal proceedings within the time limited therefor by that subsection, the licensee who made the request may, unless the licence-contract otherwise provides, institute those proceedings in his own name after notifying the owner of the patent of his intention to do so.

(4) The owner of a patent may join in any legal proceedings instituted under subsection (1) by a licensee in respect of that patent; but the licensee is liable to the owner of the patent for any damages that the owner sustains as a result of any unwarranted legal proceedings instituted by the licensee.

(5) Where a licensee institutes legal proceedings in his own name under this section, he must prove to the Court that the owner of the patent to which the proceedings relate failed within the time limited therefor by subsection (1) to institute legal proceedings.

55. Notwithstanding section 54, a licensee may, before the expiration of the period of 90 days referred to in section 54, apply to the High Court for an injunction to prevent infringement or to prohibit further infringement of the patent; and the Court may grant the injunction where the licensee proves that

Institution of action by licensee.

- (a) immediate action is necessary to prevent substantial damage from the infringement of the patent in respect of which the application is made; and
- (b) the owner of the patent of invention had been requested to institute legal proceedings and had failed to do so.

55A. (1) Where the invention for which a patent is granted is a process for obtaining a new product, the same product produced by a person other than the owner of the patent or a licensee shall, unless the contrary is proved, be taken in any proceedings to have been obtained by that process.

Burden of proof in certain cases. 2006-2.

(2) In determining whether a party has discharged the burden imposed upon him by this section, the Court shall not require him to disclose any manufacturing or commercial secrets if it appears to the Court that it would be unreasonable to do so.

Other Proceedings

56. (1) Any interested person may institute proceedings in the High Court to have a patent declared invalid.

Invalidation.

(2) In any proceedings under subsection (1), the Court may declare a patent invalid

- (a) if any of the requirements mentioned in paragraphs (a) to (e) of subsection (1) of section 27 had not been complied with at the time the patent was granted; or
- (b) if the right to the patent does not belong to the person to whom the patent was granted; or
- (c) if the patent had not been assigned to the person who has the right to the patent.

(3) If in any proceedings under subsection (1) the Court is satisfied that only a part of the claim of invention or some of the claims of invention under the patent ought to be declared invalid, the Court may declare the patent invalid in respect only of that part of the claim of invention or in respect only of those claims of invention.

(4) When a part only of a claim of invention is declared invalid by the Court, the declaration acts as a corresponding limitation on the claim set out in the patent to which the declaration relates.

(5) In any proceedings under subsection (1), the Court may require the owner of the patent for which the order of invalidity is sought to submit to the Court for examination any publication or other document showing the prior art referred to

- (a) in connection with an application for the patent under this Act;
- (b) in connection with an application for any title of protection lodged for the same or substantially the same invention by the owner of the patent with any other national or regional Intellectual Property Office; or
- (c) in connection with any proceedings relating to the patent or other title of protection granted as a result of an application referred to in paragraph (a) or (b).

Notice of
invalidation
proceedings.

57. (1) The owner of the patent for which a declaration of invalidity is sought shall give notice of the proceedings for the declaration of invalidity to all licensees; and any licensee whether under a voluntary or non-voluntary licence may join in the proceedings in the absence of any provision to the contrary in the licence-contract.

(2) Where a person other than the person with a right to the patent institutes proceedings to have a patent declared invalid on any ground described in paragraph (b) or (c) of section 56(2), he shall give notice of the commencement of the proceedings to the person with the right to the patent.

58. Where a patent, a part of a claim of invention, or some of the claims of invention in a patent are declared invalid pursuant to proceedings under section 56, the patent, part of the claim, or the claims are, as the case may be, thereupon invalid with effect from the date of the impugned grant of patent.

Effect of
invalidity.

59. (1) Where, in respect of any act he is performing or intending to perform with any product or process, a person is threatened with any proceedings of a civil or criminal nature under this Act by any other person, he may institute proceedings in the High Court against

Remedy for
threats of
infringement
proceedings.

that other person for a declaration that the acts performed, being performed or to be performed with that product or process did not, do not, or will not, constitute infringement of any patent of interest to that other person.

(2) If a person who institutes proceedings under subsection (1) satisfies the High Court that the acts that he performed, that he is performing, or that he intends to perform with any product or process, did not, do not, or will not infringe any rights in respect of any patent of interest to the person who threatened him with infringement proceedings under this Act, the Court may

- (a) award him damages for any economic loss he has sustained as a result of the threatened infringement proceedings; and
- (b) grant him an injunction restraining the person who threatened the infringement proceedings from further similar threats in relation to the product or process concerned.

(3) For the purposes of this section, notifying a person of the existence of a patent in respect of a product or process and directing his attention to the legal consequences of an infringement of a patent do not constitute a threat of infringement proceedings.

(4) Proceedings may not be instituted under this section by a person threatened by infringement proceedings in respect of a product or process after the expiration of 5 years from the day on which the last threat to institute infringement proceedings in respect of that product or process was made.

60. (1) Without prejudice to the High Court's jurisdiction to make a declaration apart from this section, a declaration that an act (that is to say, the use by any person of any process, or the making or use or sale by any person of any product) does not, or a proposed act would not, constitute an infringement of a patent may be made by the High Court in proceedings between the person doing or proposing to do the act and the owner of the patent, notwithstanding that no assertion to the contrary has been made by the owner, if it is shown

Power of High Court to make declaration as to non-infringement.

(a) that that person has applied in writing to the owner for a written acknowledgment to the effect of the declaration claimed, and has furnished him with full particulars in writing of the act in question; and

(b) that the owner has refused or failed within a reasonable time to give any such acknowledgment.

(2) No declaration under subsection (1) shall be made if the act in question is already the subject matter of an infringement proceeding.

(3) Where proceedings are instituted under subsection (1), the owner of the patent for the invention in respect of which the proceedings have been instituted shall give notice of the commencement of those proceedings to any licensees under any licence-contracts related to the invention; and a licensee under any such licence-contract may join in those proceedings.

(4) The person who institutes proceedings under subsection (1) in respect of a patent shall give notice of the commencement of those proceedings to the licensees under any voluntary or non-voluntary licence or to an authorised person; and a licensee under any such licence or an authorised person may join in those proceedings.

(5) Proceedings instituted under subsection (1) may be combined with proceedings to have the patent declared invalid; but a defendant in any infringement proceedings under this Act may not institute proceedings under subsection (1) in respect of the act that is the subject of the infringement proceedings.

(6) For the purposes of this section, “authorised person” means a person named in an order made under section 49(1).

Communication of Court Decisions

Transmis-
sion of
Court
decision to
Director.

61. The Registrar of the Supreme Court shall, on the determination of any action or appeal to the Court under this Act, send a certified copy of the Court’s decision to the Director, who shall

- (a) record the decision in the register in the appropriate place or file;
- (b) publish a notice of the decision in the *Gazette*; and
- (c) communicate the decision to the owner of the patent, applicant for a patent, licensee, transferor, transferee, and to any other person to whom the decision is relevant, as the circumstances require.

Criminal Liability

62. (1) No person shall knowingly infringe any right vested in any other person under this Act. Offence.

(2) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction

- (a) to a fine of \$50 000 or to imprisonment for a term of 2 years, or to both; and
- (b) in the case of a continuing offence, to a further fine of \$2 000 a day for each day or part of a day on which the offence continues.

63. A prosecution for an offence under section 62 may be brought at any time within 5 years from the day the offence was committed or, in the case of a continuing offence, from the day on which the offence was last committed. Limitation.

PART VI

GENERAL

The Register

64. (1) The Director shall maintain a register of patents in such form as may be approved by the Director, and shall record therein Register.

- (a) all applications for patents accorded a filing date under this Act;

- (b) all patents granted under this Act; and
- (c) all transactions required by this Act to be recorded in connection with
 - (i) each application for a patent referred to in paragraph (a); and
 - (ii) each patent granted under this Act.

(2) A licence-contract must be recorded in a separate section of the register reserved for registration of contracts.

Inspection. **65.** (1) The register is a public record and may be inspected during business hours by any member of the public free of charge.

(2) An inspection of the register includes making copies or extracts therefrom, but, on payment of the prescribed fee therefor, extracts or copies of any records in the register may be obtained from the Director.

(3) Notwithstanding subsections (1) and (2), a file in the register that relates to a licence-contract may only be examined, or an extract may only be made therefrom, on the written permission of one of the parties to the licence-contract and upon payment to the Director of the prescribed fee.

Administration

Secrecy. **66.** (1) No employee of the Intellectual Property Office shall, whether during his period of employment or thereafter

- (a) communicate information obtained in his capacity as an employee of that office to a person not entitled to the information;
- (b) disclose information referred to in paragraph (a) to the public; or
- (c) make use of the information for his personal gain in a manner that is not related to his duties in the office.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$2 000 or to imprisonment for a term of 12 months, or to both.

67. (1) When a change occurs in the ownership of an application Register change. for a patent or in a patent, the change shall, upon payment of the prescribed fee, be recorded in the register by the Director.

(2) A change described in subsection (1) has no effect against any person other than the parties to the change until the change is recorded in the register.

(3) The Director shall publish in the *Gazette* every change described in subsection (1) when it is reported to him in the prescribed manner.

68. (1) Subject to subsection (2), the Director may or any person Rectification of register. may request the Director to

- (a) correct any linguistic error;
- (b) correct any error of transcription;
- (c) correct any clerical error;
- (d) correct any mistake;

in any specification of a patent or any application for a patent or any document filed in pursuance of an application; or

- (e) correct any other error in the register.

(2) Before a correction is made to the register under subsection (1), the Director shall give notice of the proposal to the owner of the patent, to the applicant for the patent and to any other person who appears to him to be concerned, as the case requires.

(3) The High Court may, on the application of a person aggrieved, order the register to be rectified by the making or variation or deletion of any entry in it.

(4) In proceedings under subsection (3), the High Court may determine any question which it may be necessary or expedient to decide in connection with the rectification of the register.

Immunity as regards official acts.

69. No employee of the Intellectual Property Office

(a) shall be taken to warrant the validity of any patent granted under this Act or any treaty or international convention to which Barbados is a party; or

(b) shall incur any liability by reason of or in connection with any examination or investigation required or authorised by this Act or any such treaty or convention, or any report or other proceedings consequent on any such examination or investigation.

Miscellaneous

Service of communication.

70. Unless otherwise provided by this Act, any communication with an applicant for a patent under this Act, an owner of a patent under this Act, a licensee, or an agent of any of them, may be validly made by sending the communication to his address, or to his address for service in Barbados, as recorded in the register.

Fees to Consolidated Fund.

71. All payments received by the Director pursuant to this Act shall be paid by him into the Consolidated Fund.

Expenses.

72. All expenses incurred in the administration of this Act are to be defrayed out of the money provided by Parliament for that purpose.

Judicial notice of certain instruments.

73. Judicial notice shall be taken of any bulletin, journal or *Gazette* published under the Paris Convention or the Patent Co-operation Treaty.

Regulations.

74. The Minister may make regulations to provide for any matters required to be prescribed or provided for by this Act and, generally, for the efficient operation of this Act.

75. (1) Notwithstanding its repeal by this Act, the former Act shall, *Saving.* subject to this section, continue in force for

- (a) patents granted in Barbados before 6th August, 2001;
- (b) applications for patents under the former Act that were filed in Barbados before 6th August, 2001,

but patents granted under the former Act may only be renewed pursuant to this Act.

(2) A patent granted under the former Act shall remain in force for 20 years from the date of the application.

(3) Nothing in this Act applies to or affects

- (a) any proceedings for revocation or infringement of a patent, commenced before the coming into operation of this Act;
- (b) any existing licence or any application for a licence made before 6th August, 2001.

(4) The regulations made under the former Act shall, except in so *1984/84.* far as they are inconsistent with this Act, continue to have effect as though made under this Act.

(5) In this section “former Act” means the *Patents Act, 1981.* *1981-55.*

76. This Act binds the Crown. *Binding Crown.*