



Western Australia.

ANNO QUINQUAGESIMO SECUNDO

VICTORIÆ REGINÆ.

No. V.

AN ACT to amend and consolidate the Law relating to Patents for Inventions.

[Assented to, 26th November, 1888.]

WHEREAS it is desirable to amend and consolidate the law relating to Patents for Inventions: Be it enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

1. THIS Act may be cited as “The Patent Act, 1888.”

Short title.

2. THIS Act, except where it is otherwise expressed, shall come into operation on the first day of January, One thousand eight hundred and eighty-nine.

Commencement.

3. FOR the purposes of this Act, and save so far as the context requires a different meaning, the following words shall have the meanings in this section assigned to them, namely:—

Interpretation.

“The Registrar” shall mean the Registrar of Patents.

“The Court” shall mean the Supreme Court of this Colony.

“Prescribed”

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“Prescribed” shall mean prescribed by any of the schedules to this Act, or by regulations under this Act.

“Examiner” shall mean any skilled person or persons to whom the Registrar shall refer questions concerning Patents under this Act.

“Foreign vessel” shall mean vessel belonging to any other state or colony.

The Patent Office and the Registrar of Patents.

4. THE Patent Office shall be attached to the Department of the Registrar General, or to a branch of such Department, and shall be under the immediate control of the Registrar of Patents, who shall be appointed by the Governor.

Provision for absence of Registrar.

5. ANY act or thing directed to be done by or to the Registrar may, in his absence, be done by or to any officer for the time being in that behalf authorised by the Registrar General.

Seal of Patent Office.

6. THERE shall be a seal for the Patent Office, to be called “The Seal of the Patent Office,” and impressions thereof shall be judicially noticed and admitted in evidence.

Persons entitled to apply for patent.

7. ANY person, whether a British subject or not, may make an application for a patent, or two or more persons may make a joint application for a patent, and a patent may be granted to them jointly.

Application and specification.

8. (1.) AN application for a patent must be made in the form set forth in the First Schedule to this Act, or in such other form as may be from time to time prescribed, or in a form as like thereto as the circumstances will permit; and must be left at the patent office in the prescribed manner.

(2.) An application must contain a statutory declaration by the applicant, or, in the case of a joint application, by one of the applicants, to the effect that one or more of the applicants is or are in possession of an invention, whereof one or more of the applicants claims or claim to be the true and first inventor or inventors, or to which one or more of the applicants claims or claim to be entitled as legal representative or representatives, or under a bequest in the will of the true and first inventor, and for which the applicant or applicants desires or desire to obtain a patent. The application must be accompanied by either a provisional or complete specification, and must state an address in Perth for the reception of notices and other communications with respect to the application or invention.

(3.) A provisional specification must describe the nature of the invention, and be accompanied by drawings, if required.

(4.)

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(4.) A complete specification, whether left on application or subsequently, must particularly describe and ascertain the nature of the invention, and in what manner it is to be performed, and must be accompanied by drawings, if required.

(5.) A specification, whether provisional or complete, must commence with the title, and in the case of a complete specification must end with a distinct statement of the invention claimed.

9. THE Registrar shall, if he think fit, refer any application to an examiner, who shall ascertain whether the nature of the invention has been fairly described, and the application, specification, and drawings (if any) have been prepared in the prescribed manner, and the title sufficiently indicates the subject-matter of the invention, and shall report thereon to the Registrar.

Registrar may refer application to examiner.

10. (1.) IF the examiner reports that the nature of the invention is not fairly described, or that the application, specification, or drawings has not or have not been prepared in the prescribed manner, or that the title does not sufficiently indicate the subject-matter of the invention, the Registrar may require that the application, specification, or drawings be amended, before he proceeds with the application.

Power for Registrar to refuse application or require amendment.

(2.) Where the Registrar requires an amendment, the applicant may appeal from his decision to the Attorney General.

(3.) The Attorney General shall, if required, hear the applicant and the Registrar, and may make an order determining whether and subject to what conditions (if any) the application shall be accepted.

(4.) The Registrar shall, when an application has been accepted, give notice thereof to the applicant.

(5.) If after an application has been made, but before a patent has been sealed, an application is made, accompanied by a specification bearing the same or a similar title, the Registrar, if he think fit, may refer the question to an examiner, who shall report to the Registrar whether the specification appears to the examiner to comprise the same invention; and, if he reports in the affirmative, the Registrar shall give notice to both applicants that he has so reported. Where the examiner reports in the affirmative, the Registrar may determine, subject to an appeal to the Attorney General, whether the invention comprised in both applications is the same, and, if so, he may refuse to seal a patent on the application of the second applicant.

11. (1.) IF the applicant does not leave a complete specification with his application, he may leave it at any subsequent time within
nine

Time for leaving complete specification.

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nine months from the date of application, and the Registrar may, on payment of the prescribed fee, extend such time to ten months.

(2.) Unless a complete specification is left within nine months, or such extended time, the application shall be deemed to be abandoned.

Comparison of provisional and complete specification.

12. (1.) WHERE a complete specification is left after a provisional specification, the Registrar may, if he think fit, refer both specifications to an examiner for the purpose of ascertaining whether the complete specification has been prepared in the prescribed manner, and whether the invention particularly described in the complete specification is substantially the same as that which is described in the provisional specification.

(2.) If the examiner reports that the conditions hereinbefore contained have not been complied with, the Registrar may refuse to accept the complete specification unless and until the same shall have been amended to his satisfaction; but any such refusal shall be subject to appeal to the Attorney General.

(3.) The Attorney General shall, if required, hear the applicant and the Registrar, and may make an order determining whether and subject to what conditions, if any, the complete specification shall be accepted.

(4.) Unless a complete specification is accepted within twelve months from the date of application, or such extended time not exceeding fifteen months from the date of the application, as the Registrar on payment of the prescribed fee may allow, then (save in the case of an appeal having been lodged against the refusal to accept) the application shall, at the expiration of the said twelve months, or such extended time, become void.

(5.) Reports of examiners shall not in any case be published or be open to public inspection, and shall not be liable to production or inspection in any legal proceeding, other than an appeal to the Attorney General under this Act, unless the court or officer having power to order discovery in such legal proceeding shall certify that such production or inspection is desirable in the interests of justice, and ought to be allowed.

Advertisement on acceptance of complete specification.

13. ON the acceptance of the complete specification, the Registrar shall advertise the acceptance in the *Government Gazette* of Western Australia; and the application and specification or specifications with the drawings (if any) shall be open to public inspection.

Opposition to grant of patent.

14. (1.) ANY person may, at any time within two months from the date of the advertisement of the acceptance of a complete specification, give notice at the patent office of opposition to the grant of the

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the patent on the ground of an applicant having obtained the invention from him, or from a person of whom he is the legal representative, or on the ground that the invention has been patented in this Colony on an application of prior date, or on the ground of an examiner having reported to the Registrar that the specification appeared to him to comprise the same invention as is comprised in a specification bearing the same or a similar title, and accompanying a previous application, but on no other ground.

(2.) Where such notice is given, the Registrar may require the applicant to give security to an amount not exceeding Twenty-five pounds for the costs of the opposition; and if the security so required is not given within the said two months, the opposition shall lapse.

(3.) Where such notice and such security, if required, is given, the Registrar shall give notice of the opposition to the applicant, and shall, on the expiration of the said two months, after hearing the applicant and the person so giving notice, if desirous of being heard, decide on the case, but subject to appeal to the Attorney General.

(4.) The Attorney General shall, on such appeal, hear the applicant and any person so giving notice and being, in the opinion of the Attorney General, entitled to be heard in opposition to the grant, and shall determine whether the grant ought or ought not to be made.

(5.) The Attorney General may, if he thinks fit, obtain the assistance of an expert, who shall be paid such remuneration as the Attorney General shall determine.

(6.) The Attorney General or the Registrar, as the case may be, may, after decision, make such order as may be thought fit for the payment of costs by the applicant to the party giving notice or *vice versa*, and such order may be made a rule of the Court on an application *ex parte*.

15. WHERE an application for a patent has been abandoned, or become void, the specification or specifications and drawings (if any) accompanying or left in connection with such application shall not at any time be open to public inspection or be published by the Registrar.

Specifications, &c.,
not to be published
unless application
accepted.

16. (1.) IF there is no opposition, or, in the case of opposition, if the determination is in favor of the grant of a patent, the Registrar shall cause a patent to be sealed with the seal of the Patent Office.

Sealing of patent.

(2.) A patent shall be sealed as soon as may be, and not after

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after the expiration of fifteen months from the date of application, except in the cases hereinafter mentioned, that is to say—

- (a.) Where the sealing is delayed by an appeal to the Attorney General, or by opposition to the grant of the patent, the patent may be sealed at such time as the Attorney General may direct.
- (b.) If the person making the application dies before the expiration of the fifteen months aforesaid, the patent may be granted to his legal representative and sealed at any time within six months after the death of the applicant.
- (c.) Where the Registrar has extended the time for leaving or the time for accepting the complete specification, or both such times, the total period of time so extended shall be added to the period of fifteen months above provided.

Date of patent.

17. EVERY patent shall be in duplicate, and one duplicate shall be deposited in the Patent Office, and every patent shall be dated and sealed as of the day of the application: Provided that no proceedings shall be taken in respect of an infringement committed before the publication of the complete specification: Provided also, that in case of more than one application for a patent for the same invention, the sealing of a patent on one of those applications shall not prevent the sealing of a patent on an earlier application.

Provisional Protection.

Provisional protection.

18. WHERE an application for a patent in respect of an invention has been accepted, the invention may during the period between the date of the application and the date of sealing such patent be used and published without prejudice to the patent to be granted for the same; and such protection from the consequences of use and publication is in this Act referred to as provisional protection.

Protection by Complete Specification.

Effect of acceptance of complete specification.

19. AFTER the acceptance of a complete specification, and until the date of sealing a patent in respect thereof, or the expiration of the time for sealing, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the acceptance of the complete specification: Provided that an applicant shall not be entitled to institute any proceeding for infringement, unless and until a patent for the invention has been granted to him.

Patent.

*Patents for Inventions.**Patent.*

20. A PATENT may be granted to several applicants jointly, although some or one of them only are or is the true and first inventors or inventor. Power to grant patents jointly, though some grantees are not inventors.

21. EVERY patent, when sealed, shall have effect throughout the Colony of Western Australia. Extent of patent.

22. (1.) THE term limited in every patent for the duration thereof shall be fourteen years from its date. Term of patent.

(2.) But every patent shall, notwithstanding anything therein or in this Act, cease if the patentee fails to make the prescribed payments within the prescribed times.

(3.) If, nevertheless, in any case, by accident, mistake, or inadvertence, a patentee fails to make any prescribed payment within the prescribed time, he may apply to the Registrar for an enlargement of the time for making that payment.

(4.) Thereupon the Registrar shall, if satisfied that the failure has arisen from any of the above-mentioned causes, on receipt of the prescribed fee for enlargement, not exceeding Ten pounds, enlarge the time accordingly, subject to the following conditions:

(a.) The time for making any payment shall not in any case be enlarged for more than six months:

(b.) If any proceeding shall be taken in respect of an infringement of the patent committed after a failure to make any payment within the prescribed time, and before the enlargement thereof, the Court before which the proceeding is proposed to be taken may, if it shall think fit, refuse to award or give any damages in respect of such infringement.

Amendment of Specification.

23. (1.) AN applicant or a patentee may, from time to time, by request in writing left at the Patent Office, seek leave to amend his specification, including drawings forming part thereof, by way of disclaimer, correction, or explanation, stating the nature of such amendment and his reasons for the same. Amendment of specification.

(2.) The request and the nature of such proposed amendment shall be advertised in the *Government Gazette*, and at any time within one month from its first advertisement any person may give notice at the patent office of opposition to the amendment.

(3.) Where such notice is given, the Registrar shall give notice of the opposition to the person making the request, and shall hear

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hear and decide the case, subject to an appeal to the Attorney General.

(4.) The Attorney General shall, if required, hear the person making the request and the person so giving notice, and being, in the opinion of the Attorney General, entitled to be heard in opposition to the request, and shall determine whether, and subject to what conditions, if any, the amendment ought to be allowed.

(5.) Where no notice of opposition is given, or the person so giving notice does not appear, the Registrar shall determine whether, and subject to what conditions, if any, the amendment ought to be allowed.

(6.) When leave to amend is refused by the Registrar, the person making the request may appeal from his decision to the Attorney General.

(7.) The Attorney General shall, if required, hear the person making the request and the Registrar, and may make an order determining whether, and subject to what conditions, if any, the amendment ought to be allowed.

(8.) No amendment shall be allowed that would make the specification, as amended, claim an invention substantially larger than or substantially different from the invention claimed by the specification as it stood before amendment.

(9.) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall in all courts and for all purposes be deemed to form part of the specification.

(10.) The foregoing provisions of this section do not apply when and so long as any action for infringement or other legal proceeding in relation to a patent is pending.

Power to disclaim
part of invention
during action, &c.

24. IN an action for infringement of a patent, and in a proceeding for revocation of a patent, the Court or a Judge may order that the patentee shall, subject to such terms as to costs and otherwise as the Court or a Judge may impose, be at liberty to apply at the Patent Office for leave to amend his specification by way of disclaimer, and may direct that in the meantime the trial or hearing of the action shall be postponed.

Restriction on
recovery of damages.

25. WHERE an amendment by way of disclaimer, correction, or explanation has been allowed under this Act, no damages shall be given in any action in respect of the use of the invention before the disclaimer, correction, or explanation, unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge.

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26. EVERY amendment of a specification shall be advertised in the *Government Gazette* of Western Australia.

Advertisement of amendment.

Compulsory Licenses.

27. IF on the petition of any person interested it is proved to the Governor in Council that, by reason of the default of a patentee to grant licenses on reasonable terms—

Power for Governor to order grant of licenses.

- (a.) The patent is not being worked in this Colony ; or
- (b.) The reasonable requirements of the public with respect to the invention cannot be supplied ; or
- (c.) Any person is prevented from working or using to the best advantage an invention of which he is possessed ;

the Governor in Council may order the patentee to grant licenses on such terms as to the amount of royalties, security for payment, or otherwise, as the Governor in Council, having regard to the nature of the invention and the circumstances of the case, may deem just, and any such order may be enforced by mandamus.

Register of Patents.

28. (1.) THERE shall be kept at the Patent Office a book called the Register of Patents, wherein shall be entered the names and addresses of grantees of patents, notifications of assignments and of transmissions of patents, of licenses under patents, and of amendments, extensions, and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may from time to time be prescribed.

Register of patents.

(2.) The Register of Patents shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

(3.) Copies of deeds, licenses, and any other documents affecting the proprietorship in any letters patent or in any license thereunder, must be supplied to the Registrar in the prescribed manner for filing in the Patent Office.

Fees.

29. THERE shall be paid, in respect of the several matters and things described in the Second Schedule to this Act, the fees in that schedule mentioned ; and such fees shall be levied and paid to the credit of the general revenue of the Colony.

Fees in schedule.

Extension of Term of Patent.

30. (1.) A PATENTEE may, after advertising in manner directed by any rules made under this section his intention to do so, present a petition to the Governor in Council, praying that his patent may be extended for a further term ; but such petition must be

Extension of term of patent on petition to the Governor in Council.

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be presented at least six months before the time limited for the expiration of the patent.

(2.) Any person may enter a caveat, addressed to the Clerk of the Executive Council at the Council Office, against the extension.

(3.) If the Governor in Council shall be pleased to refer any such petition to the Supreme Court, the Court shall proceed to consider the same, and the petitioner and any person who has entered a caveat shall be entitled to be heard by himself or by counsel on the petition.

(4.) The Court shall, in considering their decision, have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case.

(5.) If the Court report that the patentee has been inadequately remunerated by his patent, it shall be lawful for the Governor in Council to extend the term of the patent for a further term not exceeding seven, or, in exceptional cases, fourteen years; or to order the grant of a new patent for the term therein mentioned, and containing any restrictions, conditions, and provisions that the Court may think fit.

(6.) It shall be lawful for the Governor in Council to make, from time to time, rules of procedure and practice for regulating proceedings on such petitions, and subject thereto such proceedings shall be regulated according to the existing procedure and practice in patent matters of the Court.

(7.) The costs of all parties of and incident to such proceedings shall be in the discretion of the Court; and the orders of the Court respecting costs shall be enforceable in like manner as other orders of the Court.

Revocation.

31. (1.) NO proceeding by *scire facias* to repeal a patent shall be taken.

Revocation of patent.

(2.) Revocation of a patent may be obtained on petition to the Court.

(3.) Every ground on which a patent might, at the commencement of this Act, be repealed by *scire facias* shall be available by way of defence to an action for infringement, and shall also be a ground of revocation.

(4.) A petition for revocation of a patent may be presented by—

(a.) The Attorney General:

(b.) Any person authorised by the Attorney General:

(c.)

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- (c.) Any person alleging that the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims:
- (d.) Any person alleging that he, or any person under or through whom he claims, was the true inventor of any invention included in the claim of the patentee:
- (e.) Any person alleging that he, or any person under or through whom he claims an interest in any trade, business, or manufacture, had publicly manufactured, used, or sold, within this Colony, before the date of the patent, anything claimed by the patentee as his invention.

(5.) The plaintiff must deliver with his petition particulars of the objections on which he means to rely; and no evidence shall, except by leave of the Court or a Judge, be admitted in proof of any objection of which particulars are not so delivered.

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

(7.) The defendant shall be entitled to begin, and give evidence in support of the patent; and if the plaintiff gives evidence impeaching the validity of the patent, the defendant shall be entitled to reply.

(8.) Where a patent has been revoked on the ground of fraud, the Registrar may, on the application of the true inventor made in accordance with the provisions of this Act, grant to him a patent in lieu of and bearing the same date as the date of the revocation of the patent so revoked, but the patent so granted shall cease on the expiration of the term for which the revoked patent was granted.

Crown.

32. A PATENT shall have to all intents the like effect as against Her Majesty the Queen, Her heirs and successors, as it has against a subject, excepting always that the officers or authorities administering any department of the service of the Crown may, by themselves, their agents, contractors, or others, at any time after the application, use the invention for the services of the Crown on terms to be before or after the use thereof agreed on, with the approval of the head of the department, between those officers or authorities and the patentee, or, in default of such agreement, on such terms as may be settled by the Court after hearing all parties interested.

Patent to bind
Crown.

Legal Proceedings.

33. (1.) IN an action or proceeding for infringement or revocation of a patent, the Court may, if it think fit, or on the request of either

Hearing with assessor.

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either of the parties to the proceeding, call in the aid of an assessor specially qualified, and try and hear the case wholly or partially with his assistance; the action shall be tried without a jury, unless the Court shall otherwise direct.

(2.) The remuneration, if any, to be paid to an assessor under this section shall be determined by the Court and be paid in the same manner as the other expenses of the execution of this Act.

Delivery of particulars.

34. (1.) IN an action for infringement of a patent, the plaintiff must deliver with his statement of claim, or, by order of the Court or a Judge, at any subsequent time, particulars of the breaches complained of.

(2.) The defendant must deliver with his statement of defence, or, by order of the Court or a Judge, at any subsequent time, particulars of any objections on which he relies in support thereof.

(3.) If the defendant disputes the validity of the patent, the particulars delivered by him must state on what grounds he disputes it, and if one of those grounds is want of novelty must state the time and place of the previous publication or user alleged by him.

(4.) At the hearing no evidence shall, except by leave of the Court or a Judge, be admitted in proof of any alleged infringement or objection of which particulars are not so delivered.

(5.) Particulars delivered may be from time to time amended, by leave of the Court or a Judge.

(6.) On taxation of costs regard shall be had to the particulars delivered by the plaintiff and by the defendant; and they respectively shall not be allowed any costs in respect of any particular delivered by them, unless the same is certified by the Court or a Judge to have been proven or to have been reasonable and proper, without regard to the general costs of the case.

Order for inspection, &c., in action.

35. IN an action for infringement of a patent, the Court or a Judge may, on the application of either party, make such order for an injunction inspection or account, and impose such terms and give such directions respecting the same and the proceedings thereon as the Court or a Judge may see fit.

Certificate of validity questioned and costs thereon.

36. IN an action for infringement of a patent, the Court or a Judge may certify that the validity of the patent came in question; and if the Court or a Judge so certifies, then in any subsequent action for infringement, the plaintiff in that action, on obtaining a final order or judgment in his favor, shall have his full costs, charges, and expenses as between solicitor and client, unless the Court or Judge trying the action certifies that he ought not to have the same.

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37. WHERE any person claiming to be the patentee of an invention, by circulars, advertisements, or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged manufacture, use, sale, or purchase of the invention, any person or persons aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as may have been sustained thereby, if the alleged manufacture, use, sale, or purchase to which the threats related was not in fact an infringement of any legal rights of the person making such threats: Provided that this section shall not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his patent.

Remedy in case of groundless threats of legal proceedings.

Miscellaneous.

38. IT shall be lawful for the Registrar, with the sanction of the Governor, to license fit and proper persons to be patent agents for transacting business under the provisions of this Act, and, upon proof to the Registrar satisfaction of the malfeasance or incapacity of any such licensed patent agent, or on non-payment of any annual fee for any such license, as prescribed by the Second Schedule hereto, and with such sanction as aforesaid, to revoke any such license.

Licensed patent agents.

39. EVERY patent may be in the form in the First Schedule to this Act, and shall be granted for one invention only, but may contain more than one claim; but it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it comprises more than one invention.

Patent for one invention only.

40. (1.) IF a person possessed of an invention for which he is entitled to obtain a patent dies without making application for a patent for the invention, application may be made by, and a patent for the invention granted to, the legal representative of the inventor, or to any person to whom the inventor may have bequeathed or assigned the right to obtain the patent.

Patent on application of representative of deceased inventor.

(2.) Every such application must be made within six months of the decease of such person, and must contain a declaration by the legal representative that he believes such person to be the true and first inventor of the invention.

41. A PATENT granted to the true and first inventor shall not be invalidated by an application in fraud of him, or by provisional protection obtained thereon, or by any use or publication of the invention subsequent to that fraudulent application during the period of provisional protection.

Patent to first inventor not invalidated by application in fraud of him.

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- Assignment of patent for particular place. **42.** A PATENTEE may assign his patent for the whole of the Colony or any place in or any part thereof.
- Loss or destruction of patent. **43.** IF a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the Registrar, the Registrar may at any time cause a triplicate thereof to be sealed and delivered to the person entitled thereto.
- Witnesses may be summoned. **44.** FOR the purpose of any application or opposition or other matters requiring the decision of the Registrar or the Attorney-General, they or either of them may, and at the request of any party to be heard shall, issue summonses under the seal of the Patent Office for the attendance of witnesses, and may examine witnesses on oath and administer oaths for that purpose under this part of the Act, and every witness so summoned shall be bound to attend at the time and place mentioned in such summons on being paid his expenses according to the scale for the time being allowed to witnesses on trials in local courts, and to continue in attendance until the matter shall have been disposed of, and to produce any document in his power, possession, custody, or control which he shall by such summons be required to produce.
- See Imperial Patent Act, 1883, s. 38. **45.** THE Attorney-General may from time to time make, alter, and rescind rules regulating references and appeals to the Attorney-General, and the practice and procedure before him under this part of this Act; and in any proceeding before the Attorney-General under this part of this Act, he may order costs to be paid by either party, and any such order may be made a rule of the Court.
- Proceedings and costs before Attorney General. **46.** THE exhibition of an invention at an industrial or international exhibition, certified as such under the hand of the Registrar, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition in the place where the exhibition is held, or the use of the invention during the period of the holding of the exhibition by any person elsewhere, without the privity or consent of the inventor, shall not prejudice the right of the inventor or his legal personal representative to apply for and obtain provisional protection and a patent in respect of the invention or the validity of any patent granted on the application, provided that both the following conditions are complied with, namely:
- Exhibition at industrial or international exhibition not to prejudice patent rights. *(a.)* The exhibitor must, before exhibiting the invention, give the Registrar the prescribed notice of his intention to do so; and *(b.)*

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- (b.) The application for a patent must be made before or within six months from the date of the opening of the exhibition.

47. WHERE the invention is one which admits of being represented by a model, the Registrar may require the patentee to furnish him with a model of the invention on payment to the patentee of the cost of the manufacture of the model; the amount to be settled in case of dispute by the Attorney General.

Power to require models on payment.

48. (1.) THE inventor of any improvement in instruments or munitions of war, his executors, administrators, or assigns (who are in this section comprised in the expression the inventor) may (either for or without valuable consideration) assign to the Colonial Secretary, on behalf of Her Majesty, all the benefit of the invention and of any patent obtained or to be obtained for the same; and the Colonial Secretary may be a party to the assignment.

Assignment to Colonial Secretary of certain inventions.

(2.) The assignment shall effectually vest the benefit of the invention and patent in the Colonial Secretary on behalf of Her Majesty, and all covenants and agreements therein contained for keeping the invention secret and otherwise shall be valid and effectual (notwithstanding any want of valuable consideration), and may be enforced accordingly by the Colonial Secretary for the time being.

(3.) Where any such assignment has been made to the Colonial Secretary he may at any time before the application for a patent for the invention, or before publication of the specification or specifications, certify to the Registrar his opinion that, in the interest of the public service, the particulars of the invention and of the manner in which it is to be performed should be kept secret.

(4.) If the Colonial Secretary so certifies, the application and specification or specifications, with the drawings (if any), and any amendment of the specification or specifications, and any copies of such documents and drawings, shall, instead of being left in the ordinary manner at the Patent Office, be delivered to the Registrar in a packet sealed by authority of the Colonial Secretary.

(5.) Such packet shall, until the expiration of the term or extended term during which a patent for the invention may be in force, be kept sealed by the Registrar, and shall not be opened save under the authority of an order of the Colonial Secretary, or of the Attorney General.

(6.) Such sealed packet shall be delivered at any time during the continuance of the patent to any person authorised by writing under the hand of the Colonial Secretary to receive the same, and shall, if returned to the Registrar, be again kept sealed by him.

(7.)

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(7.) On the expiration of the term or extended term of the patent, such sealed packet shall be delivered to any person authorised by writing under the hand of the Colonial Secretary to receive it.

(8.) Where the Colonial Secretary certifies as aforesaid, after an application for a patent has been left at the Patent Office, but before the publication of the specification or specifications, the application, specification, or specifications, with the drawings (if any), shall be forthwith placed in a packet sealed by authority of the Registrar, and such packet shall be subject to the foregoing provisions respecting a packet sealed by authority of the Colonial Secretary.

(9.) No proceeding by petition or otherwise shall lie for revocation of a patent granted for an invention in relation to which the Colonial Secretary has certified as aforesaid.

(10.) No copy of any specification or other document or drawing, by this section required to be placed in a sealed packet, shall in any manner whatever be published or open to the inspection of the public, but save as in this section otherwise directed, the provisions of this part of this Act shall apply in respect of any such invention and patent as aforesaid.

(11.) The Colonial Secretary may, at any time by writing under his hand, waive the benefit of this section with respect to any particular invention, and the specifications, documents, and drawings shall be thenceforth kept and dealt with in the ordinary way.

(12.) The communication of any invention for any improvement in instruments or munitions of war to the Colonial Secretary or to any person or persons authorised by him to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed use or publication of such invention so as to prejudice the grant or validity of any patent for the same.

49. NO person shall receive a patent or an instrument in the nature of letters patent under this Act for an invention or discovery which has been previously patented in Great Britain or any other country, but it shall be lawful for the Governor in his discretion, on the application of any person being the holder or assignee of any patent granted or issued in Great Britain or any other country for any new discovery or invention, and upon such proof as the Governor may deem sufficient, that such person is the *bonâ fide* holder or assignee of the said patent, and that the same is in full force, and upon payment to the Colonial Treasurer of the sum of Fifteen pounds, to grant letters of registration under the seal of Western Australia to the holder of such patent as aforesaid or his assignee

Holder or assignee of patents obtained in other countries may obtain letters of registration.

Patents for Inventions.

assignee, and such letters of registration shall be deposited in the Patent Office, and shall be deemed to be letters patent issued under this Act for such invention or improvement, and shall have the same force and effect as letters patent issued thereunder; and shall inure to the benefit of the holder during the continuance of the original patent in the country in which it was issued or granted, and no longer, and all the provisions of this Act shall apply to such letters of registration in the same way *mutatis mutandis*, and as fully as to letters patent or an instrument in the nature of letters patent issued under this Act.

50. THE Governor may make regulations for carrying into effect the provisions of this Act, and for regulating the amount, collection, and disposal of the fees in the schedules hereto, and may also from time to time rescind, alter, or vary any such regulations. All such regulations shall, upon publication in the *Government Gazette* of Western Australia, be in force and effect. A copy of every such regulation shall be laid upon the table of the Legislative Council within fourteen days from the issue thereof, or, if the Legislative Council be not sitting, then within fourteen days after the commencement of the next ensuing session. Provided that, until such regulations be made, the fees in the Schedule to this Act contained shall be the fees payable in respect of the matters to which they are respectively applicable.

Governor may make regulations.

51. THE Act intituled "An Act to regulate Grants of Patents for Inventions in the Colony of Western Australia" is hereby repealed, but without prejudice to the past operation thereof, or to any letters patent lawfully granted or assigned thereunder.

Repeal of 36 Vict., No. 1.

52. THE Act 50 Vict., No. 5, is hereby repealed in so far as it relates to Patents, and the Officer therein described as Registrar of Patents, Designs, and Trade Marks shall be and be called Registrar of Designs and Trade Marks.

Partial repeal of 50 Vict., No. 5.

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

Saving for prerogative.

In the name and on behalf of the Queen I hereby assent to this Act.

F. NAPIER BROOME, Governor.

SCHEDULES.

Patents for Inventions.

SCHEDULES.

The First Schedule (Section 8).

FORMS OF APPLICATION, &c.

FORM A.

Form of Application for Patent.

(a) Here insert name, address, and calling of inventor.

(b) Here insert title of invention.

(c) Signature of inventor.

(d) Signature and title of the officer before whom the declaration is made.

I, (a) of in do solemnly and sincerely declare that I am in possession of an invention for (b) that I am the true and first inventor thereof; and that the same is not in use by any other person or persons to the best of my knowledge and belief; and I humbly pray that a patent may be granted to me for the said invention.

And I make the above solemn declaration conscientiously believing the same to be true, etc.

Declared at , in (c) day of 18 .
Before me, (d)

Justice of the Peace.

[NOTE.—This declaration must be accompanied by the statement of an address in the city of Perth in Western Australia for the reception of all notices and other communications with respect to the application or invention.]

FORM B.

Form of Provisional Specification.

(a) Here insert title as in declaration.

(b) Here insert name, address, and calling of inventor as in declaration.

(c) Here insert short description of invention.

(d) Signature of inventor.

I, (b) of (a) in , do hereby declare the nature of my invention for to be as follows (c) :—

Dated this day of , 18 . (d)

FORM C.

Form of Complete Specification.

(a) Here insert title as in declaration.

(b) Here insert name, address, and calling of inventor as in declaration.

(c) Here insert full description of invention.

(d) Here state distinctly the features of novelty claimed.

(e) Signature of inventor.

I, (b) of (a) in do hereby declare the nature of my invention for and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement (c) :—

Having now particularly described and ascertained the nature of my said invention and in what manner the same is to be performed, I declare that what I claim is (d).

1.
2.
3, &c.,
Dated this day of 18 . (e)

Form D.

Patents for Inventions.

FORM D.

Form of Patent.

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith: To all to whom these presents shall come greeting:

Whereas _____ of _____, in _____, hath by his solemn declaration represented unto us that he is in possession of an invention for _____ that he is the true and first inventor thereof, and that the same is not in use by any other person to the best of his knowledge and belief:

And whereas the said inventor hath humbly prayed that we would be graciously pleased to grant unto him (hereinafter together with his executors, administrators, and assigns, or any of them, referred to as the said patentee) our Royal Letters Patent for the sole use and advantage of his said invention:

And whereas the said inventor hath by and in his complete specification particularly described the nature of his invention:

And whereas we being willing to encourage all inventions which may be for the public good, are graciously pleased to condescend to his request:

Know ye, therefore, that we of our especial grace, certain knowledge, and mere motion do by these presents, for us, our heirs and successors, give and grant unto the said patentee our especial license, full power, sole privilege, and authority, that the said patentee by himself, his agents, or licensees, and no others, may at all times hereafter, during the term of years herein mentioned, make, use, exercise, and vend the said invention within _____ in such manner as to him or them may seem meet, and that the said patentee shall have and enjoy the whole profit and advantage from time to time accruing by reason of the said invention, during the term of fourteen years from the date hereunder written of these presents: and to the end that the said patentee may have and enjoy the sole use and exercise and the full benefit of the said invention, we do by these presents for us, our heirs and successors, strictly command all our subjects whatsoever within _____ that they do not at any time during the continuance of the said term of fourteen years, either directly or indirectly, make use of or put in practice the said invention, or any part of the same, nor in anywise imitate the same, nor make or cause to be made any addition thereto or subtraction therefrom, whereby to pretend themselves the inventors thereof, without the consent, license, or agreement of the said patentee in writing under his hand and seal, on pain of incurring such penalties as may be justly inflicted on such offenders for their contempt of this our Royal command, and of being answerable to the patentee according to law for his damages thereby occasioned: Provided that these our letters patent are on this condition, that, if at any time during the said term it be made to appear to us, our heirs or successors, or to our Supreme Court that this our grant is contrary to law, or prejudicial or inconvenient to our subjects in general, or that the said invention is not a new invention as to the public use and exercise thereof within _____, or that the said patentee is not the first and true inventor thereof within this _____, as aforesaid, these our letters patent shall forthwith determine, and be void to all intents and purposes, notwithstanding anything hereinbefore contained: Provided also, that if the said patentee shall not pay all fees by law required to be paid in respect of the grant of these letters patent, or in respect of any matter relating thereto at the time or times, and in manner for the time being by law provided; and also if the said patentee shall not supply or cause to be supplied, for our service all such articles of the said invention as may be required by the officers or commissioners administering any department of our service in such manner, at such times, and at and upon such reasonable prices and terms as shall be settled in manner for the time being by law provided, then, and in _____

