



WESTERN AUSTRALIA.

ANNO TRICESIMO SEXTO

VICTORIÆ REGINÆ.

No. I.

AN ACT to regulate Grants of Patents for Inventions in the Colony of Western Australia.

[Assented to, 15th August, 1872.]

WHEREAS it is expedient to make provision for granting Patents for Inventions in the Colony of Western Australia: Be it therefore 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 FROM and after the passing of this Act any person to whom as the originator or discoverer of any new invention or improvement in the arts or manufactures His Excellency the Governor shall according to the provisions hereinafter contained grant letters patent or an instrument in the nature of letters patent shall have within the said Colony of Western Australia for a term of fourteen years next after the granting of such letters patent or instrument the exclusive enjoyment and advantage in the said Colony of such invention or improvement and such and the same protection and such and the same remedies at law and in equity against any person in the Colony infringing the said letters patent or instrument and

Holder of letters patent issued under this Act entitled to same privileges in Western Australia as patentees under Great Seal entitled to in England.

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5th & 6th Wm. IV. c. 83.

15th & 16th Vic. c. 83.

generally such and the same rights powers and privileges throughout the said Colony with respect to the invention for which such letters patent or instrument shall be granted as any person to whom letters patent for a new invention have been granted under the Great Seal of England has by the law of England in and throughout the Realm of England (save so far as such protection remedies rights powers and privileges may be inconsistent with the provisions of this Act: Provided that so much of the provisions contained in an Act of the United Parliament of Great Britain and Ireland passed in the session of the fifth and sixth years of the Reign of His late Majesty King William the Fourth intituled "An Act to amend the law touching Letters Patent for Inventions" as relate to the confirming of letters patent or granting new letters patent to a patentee acting under an erroneous belief that he was the first and original inventor and for the prolongation of letters patent and the several provisions contained in an Act of the United Parliament of Great Britain and Ireland passed in the session of the fifteenth and sixteenth years of the Reign of Her present Majesty intituled "An Act for amending "the law for granting Patents for Inventions" shall not be deemed applicable to the Colony of Western Australia: Provided further that any of the penalties recoverable by any person holding letters patent under the Great Seal of England in any Court of Great Britain under the said first mentioned Act for any unauthorized person using or imitating the name of any such patentee or using the word "Patent" or the like words or counterfeiting the mark of any such patentee may be recoverable and recovered in similar Courts in the said Colony by any person to whom letters patent or an instrument in the nature of letters patent shall be granted under the provisions hereof or by his assignee for similar injuries to such last-mentioned patentee or his assignee in the said Colony.

Mode of application for letters patent.

2 ANY person being the originator or discoverer of any new invention or improvement as aforesaid for which no patent or instrument in the nature of letters patent has been issued in Western Australia or any other country and being desirous of obtaining letters patent or an instrument as aforesaid under this Act shall deposit with the Colonial Treasurer the sum of Twenty-five pounds and leave in the office or in the custody of such person as the Governor may appoint a petition addressed to His Excellency stating clearly and succinctly the object to be attained by his invention or discovery setting forth that he has deposited the sum of Twenty-five pounds as aforesaid and praying that letters patent or an instrument as aforesaid may be granted to him for the exclusive use thereof in the said Colony and every such person shall also

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send with his said petition a written specification signed by him of his invention or discovery and of the manner and process of making constructing using and compounding the same in such terms avoiding unnecessary prolixity as to enable any person skilled in the art or scheme to which it appertains or with which it is most nearly connected to make construct compound and use the same and in case of any machine a statement of the principle and the several modes in which he has contemplated the application of that principle or character by which it may be distinguished from other inventions and shall in the said specification particularly specify and point out the part improvement or combination which he claims as his own invention or discovery; he shall also send a drawing and written references where the nature of the case admits of drawings or specimens of ingredients and of the composition of matter sufficient in quantity for the purpose of experiment when the invention or discovery is of a composition of matter; and he shall moreover if required by such person so appointed as aforesaid furnish with the said petition a model of his invention in all cases which admit of a representation by model of a convenient size to exhibit advantageously its several parts; and he shall also send a solemn affirmation or declaration made before some Justice of the Peace of the said Colony (and which affirmation or declaration such Justice is hereby authorized to take) that the petitioner is as he believes the first and true originator or discoverer of such new invention or improvement and shall affirm or declare the object intended to be attained thereby.

3 THE Governor in his discretion may thereupon cause notice of the said application to be inserted in the *Government Gazette* and thereby require any person who may conceive that he would be prejudiced by the granting of such letters patent or instrument to send within two months of the said publication to the office or address of such person so appointed as aforesaid a statement in writing setting forth the grounds of such objection subscribed with his proper name and address.

Notice of application to be published in Gazette.

4 IT shall be lawful for the Governor upon receipt within the time aforesaid of such objection to refer the consideration thereof to one or more competent person or persons to be appointed by the said Governor and also to direct the applicant for such letters patent or instrument and the opponent of the grant or issue thereof to attend before such person or persons so appointed who shall investigate the said matter and shall be at liberty to call to his or their aid such scientific or other witnesses as he or they may think

Governor may refer objection to persons appointed who shall report to His Excellency.

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fit and to cause to be paid to such witnesses by the applicant such remuneration as he or they may direct; and such person or persons so appointed shall report to the Governor whether in his or their opinion such letters patent should be issued and if any such objection shall be sustained the said specification drawings and models shall be returned to the said applicant and the said sum of Twenty-five pounds shall be paid to Her Majesty as hereinafter mentioned.

Costs of inquiry to be given.

5 IT shall be lawful for such person or persons so appointed to whom the consideration of any such objection as aforesaid is referred if he or they see fit by certificate under his or their hand to determine the amount of the costs of any hearing or enquiry upon such objection and to order by and to whom such costs shall be paid and if any such costs so ordered to be paid be not paid within seven days after the date of such order every such order may be made a rule of the Supreme Court of such Colony.

If no objection letters patent may be issued.

6 IN case no objection shall be made to the issuing of the said letters patent or instrument within the time aforesaid or in case such person or persons so appointed shall report that such letters patent or instrument should be issued the Governor may direct by writing under his hand that such letters patent or instrument shall be issued by the Colonial Secretary or other proper officer and shall thereupon cause such specifications drawings and models so sent as aforesaid to be deposited with the Colonial Secretary of the said Colony.

Amount to be paid for letters patent.

7 THE person applying for such letters patent or instrument shall within one month after the issuing of such direction pay into the office of the Colonial Treasurer of the said Colony and obtain a receipt for the sum of Twenty-five pounds sterling which sum and the said sum of Twenty-five pounds and all other monies received by the Colonial Treasurer under this Act shall be paid to Her Majesty Her Heirs and Successors for the use of the said Colony and in support of the Government thereof.

Colonial Secretary to issue letters patent.

8 THE Colonial Secretary or other proper officer upon such directions as aforesaid and production to him of the receipts of the Colonial Treasurer shall forthwith cause letters patent to be prepared in the form in the Schedule hereunto annexed marked A and the Governor shall sign his name and cause the seal of the said Colony to be annexed to such letters patent and deliver the same to the person to whom the same shall be granted or to his agent or legal representative.

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9 THE person to whom such letters patent shall be issued shall thereupon deliver or cause to be delivered the said letters patent at the office of the said Colonial Secretary and the said letters patent shall be operative from the time of such delivery.

Letters patent to be delivered to Colonial Secretary.

10 IT shall be lawful for a larger number than ten persons to have a legal or beneficial interest in any such letters patent or instrument in the nature of letters patent issued under the provisions of this Act.

More than ten persons may be interested in letters patent.

11 EVERY patent or instrument in the nature of letters patent granted under this Act shall be assignable in law either as to the whole interest or any undivided part thereof by any instrument in writing which assignment and also every grant and conveyance of the exclusive right under any patent to make and use and to grant to others to make and use the thing patented within the said Colony shall be recorded in the office of the Colonial Secretary within three months from the execution thereof upon payment by the assignee or grantee to the Colonial Treasurer of the sum of Ten pounds.

Assignment of a patent and record thereof.

12 IN any action in the Supreme Court of the said Colony for the infringement of any letters patent or instrument in the nature of letters patent issued under the provisions of this Act it shall be lawful for the Court as well in its common law as equity jurisdiction or if the Court be not sitting then for a Judge of such Court on the application of the plaintiff or defendant respectively to make such order for an injunction inspection or account and to give such direction respecting such action injunction inspection and account and the proceedings therein respectively as to such Court or Judge shall seem fit.

Injunction may be granted.

13 ANY letters patent or instrument in the nature of letters patent granted by virtue of this Act shall be liable to be repealed by writ of *scire facias* for the same causes and in the same manner as any grants of the Crown are liable to be repealed.

Letters patent may be repealed by *scire facias*.

14 THE said Colonial Secretary shall cause both the said letters patent and the said specification and description to be kept in his office and shall also cause a book to be kept in his office containing an index to all such letters patent or instruments which may be issued or assigned; the object to be obtained by the invention to be protected thereby the date thereof the name of the person to whom the same is issued or assigned and such description of the enrolment

Letters patent and specifications, &c., to be enrolled.

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thereof as may be necessary to facilitate reference ; And all persons whosoever may have access to the said books and may inspect the same and may have copies thereof or of such parts thereof as they may require certified by the Colonial Secretary upon payment of reasonable expenses actually incurred in taking the same and copies of or extracts from the said letters patent instrument and specification certified by the said Colonial Secretary to be true copies or extracts shall be received as evidence of the contents of the said letters patent instrument and specification respectively in all proceedings whatsoever.

Specification may be corrected.

15 WHENEVER any patent or instrument in the nature of letters patent granted under the authority of this Act shall be inoperative or invalid by reason of a defective or insufficient description or specification or by reason of the patentee claiming as his own invention more than he had or shall have a right to claim as new if the error has or shall have arisen by inadvertency accident or mistake and without any fraudulent or deceptive intention it shall be lawful for His Excellency the Governor upon the surrender of such patent or instrument and the payment to the Colonial Treasurer of the sum of Ten pounds to cause a new patent or instrument as aforesaid to be issued to the said inventor for the same invention for the residue of the period then unexpired for which the original patent was granted in accordance with the patentee's corrected description and specification and in case of his death or any assignment by him made of the original patent a similar right shall vest in his executors administrators or assigns ; And the patent so reissued together with the corrected description and specification shall have the same effect and operation in law on the trial of all actions hereafter commenced for causes subsequently accruing as though the same had been originally filed in such corrected form before the issuing out of the original patent ; And whenever the original patentee or his assignee shall be desirous of adding the description and specification of any new improvement of the original invention or discovery which shall have been originated or discovered by him subsequent to the date of his patent he may like proceedings being had in all respects as in the case of original applications and on the further payment of Twenty pounds in manner hereinbefore provided have the same annexed to the original description and specification and the Colonial Secretary shall certify on the margin of such annexed description and specification the time of its being annexed and recorded and the same shall thereafter have the same effect in law to all intents and purposes as though it had been embraced in the original description and specification.

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16 ANY person who shall obtain such letters patent or instrument or his assignee may if he think fit enter with the said Colonial Secretary (having first obtained the permission in writing of the Governor) a disclaimer of any part of either the title of the invention or of the specification stating the reason for such disclaimer or may with such permission as aforesaid enter a memorandum of any alteration in the said title or specification not being such disclaimer or such alteration as shall extend the exclusive right granted by the said letters patent or instrument and such disclaimer or memorandum of alteration being deposited with the said Colonial Secretary shall be deemed and taken as part of such letters patent or instrument or such specification and subject to the several incidents thereof in all Courts of Justice in the said Colony: Provided that no such disclaimer or alteration shall be receivable as evidence in any action or suit (save and except in any proceeding by *scire facias*) pending at the time when such disclaimer or alteration was enrolled but in every such action or suit the original title and specification alone shall be deemed and taken to be the title and specification of the invention for which the letters patent have been or shall have been granted.

Disclaimer may be entered.

17 IF any person shall wilfully make or cause to be made any false entry or alteration in any register or assignment of patents or instruments as aforesaid or in any specification or shall wilfully make or forge or cause to be made or forged any false writing purporting to be a copy of any entry in the said book or of any such patents instruments or specifications or shall produce or tender or cause to be produced or tendered in evidence any such writing knowing the same to be false or forged or shall wilfully make any false affirmation before any Justices of the Peace respecting any of the matters concerning which an affirmation is hereby required to be made as aforesaid he shall be guilty of a misdemeanor and on conviction thereof shall be punished by fine and imprisonment at the discretion of the Court.

Punishment for false entries or false affirmations.

18 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

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

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upon payment to the Colonial Treasurer of the sum of Twenty-five pounds to grant letters of registration under the seal of Western Australia to the holder of such patent as aforesaid or his assignee and such letters of registration shall be deposited in the office of the Colonial Secretary in the manner herein provided 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 unless repealed by writ of *scire facias* or otherwise 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.

Interpretation clause.

19 IN the construction of this Act the word "person" shall include bodies corporate and companies as well as individuals unless the context be repugnant thereto.

Royal prerogative saved.

20 NOTHING in this Act contained shall be deemed to interfere with Her Majesty's Royal Prerogative in granting or issuing or withholding the grant or issue of any letters patent.

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

FRED. A. WELD, Governor.

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advantages hereinbefore granted and mentioned to be granted unto the said his executors, administrators, and assigns, for and during and unto the full end and term of fourteen years from the date of these presents next and immediately ensuing, according to the Act of Council in such case made and provided; And to the end that the said his executors, administrators, and assigns, and every of them, may have and enjoy the full benefit and the sole use and exercise of the said invention as hereinbefore declared, I Do by these Presents advise all and every person and persons, bodies politic and corporate, in the said Colony of Western Australia, of what estate, quality, degree, name, and condition soever they be within the said Colony, that neither they or any of them at any time during the continuance of the said term of fourteen years hereby granted, either directly or indirectly do make, use, or put in practice the said invention or any part of the same so attained unto by the said as aforesaid, nor in anywise counterfeit, imitate, or resemble the same, nor shall make or cause to be made any addition thereunto or subtraction from the same, whereby to pretend himself or themselves the inventor or inventors, devisor or devisors thereof, without the consent, license, or agreement of the said his executors, administrators, or assigns, in writing under his or their hands and seals first had and obtained in that behalf, lest by so doing they may make themselves answerable to the said his executors, administrators, and assigns, according to law, for his and their damages thereby occasioned. Provided, always, and these letters patent or instrument in the nature of letters patent are and is shall be upon this condition, that if at any time during the said term hereby granted it shall be made appear to Her Majesty Queen Victoria, Her Heirs or Successors, or to the Governor of the said Colony, that this grant is contrary to law, or prejudicial or inconvenient to her subjects in general, or that the said invention is not a new invention as to the public use and exercise thereof, or that the said is not the true and first inventor, these letters patent or instrument in the nature of letters patent shall forthwith cease, determine, and be utterly void to all intents and purposes; Provided, also, that these letters patent or instrument as aforesaid, or anything herein contained, shall not extend or be construed to extend to give privilege unto the said his executors, administrators, or assigns, or any of them, to use or imitate any invention or work whatsoever which hath heretofore been found out or invented by any other person and publicly used or exercised, unto whom letters patent or privileges have been already granted for the sole use, exercise, and benefit thereof; Provided, likewise, and these letters patent or instrument in the nature of letters patent are or is upon this express condition, that if the said has not particularly described and ascertained the nature of the said invention, and in what manner the same is to be performed, by an instrument in writing under his hand deposited with the officer appointed by the Governor, and also if the said his executors, administrators, or assigns shall not supply or cause to be supplied for the service of Her Majesty Queen Victoria, Her Heirs or Successors, in the said Colony, all such articles of the said invention as he or they shall be required to supply by the officers or commissioners administering the department of Her or their service for the use of which the same shall be required in the said Colony in such manner,

