

WESTERN AUSTRALIA

ANNO QUINQUAGESIMO OCTAVO

VICTORIÆ REGINÆ

No. 4

An Act to amend the Law relating to Patents, Designs, and Trade Marks, and to provide for International and Intercolonial Arrangements with regard to the same.
[Assented to 10th October, 1894.]

WHEREAS by section one hundred and three of the Act of the Imperial Parliament of the United Kingdom of Great Britain and Ireland called 'The Patents, Designs, and Trade Marks Act, 1883,' as amended by another Act of the said Parliament called 'The Patents, Designs, and Trade Marks Amendment Act, 1885,' it is enacted as follows (that is to say) :—

Preamble

Imp. Act, 46 and
47 Vic., c. 57Imp. Act, 48 and
49 Vic., c. 65

- (1) If Her Majesty is pleased to make any arrangement with the Government or Governments of any foreign State or States for mutual protection of inventions, designs, and trade marks, or any of them, then any person who has applied for protection for any invention, design, or trade mark in any such State shall be entitled to a patent for his invention, or to registration of his design or trade mark (as the case may be) under this Act, in priority to other applicants; and such patent or registration shall have the same date as the date of the application in such foreign State. Provided that his application is made, in the case of a patent, within seven months, and in the case of a design or trade mark within four months from his applying for protection in the foreign State with which the arrangement is in force. Provided that nothing in this section contained shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification or the actual registration of his design or trade mark in this country (as the case may be).
- (2) The publication in the United Kingdom or the Isle of Man, during the respective periods aforesaid, of any description of the invention, or the use therein during such periods of the invention, or the exhibition or use therein during such periods of the design, or the publication therein during such periods of a description or representation of the design, or the use therein during such periods of the trade mark, shall not invalidate the patent which may be granted for the invention or the registration of the design or trade mark.

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- (3) The application for the grant of a patent or the registration of a design or the registration of a trade mark under this section must be made in the same manner as an ordinary application under this Act. Provided that in the case of trade marks, any trade mark, the registration of which has been duly applied for in the country of origin, may be registered under this Act.
- (4) The provisions of this section shall apply only in the case of those foreign States with respect to which Her Majesty shall from time to time, by Order in Council, declare them to be applicable, and so long only in the case of each State as the Order in Council shall continue in force with respect to that State.

And whereas by section one hundred and four of the said first-recited Act it is further enacted as follows (that is to say) :—

- (1) Where it is made to appear to Her Majesty that the Legislature of any British Possession has made satisfactory provision for the protection of inventions, designs, and trade marks patented or registered in this country, it shall be lawful for Her Majesty from time to time, by Order in Council, to apply the provisions of the last preceding section, with such variations or additions (if any) as to Her Majesty in Council may seem fit to such British Possession.
- (2) An Order in Council under this Act shall, from a date to be mentioned for the purpose in the order, take effect as if its provisions had been contained in this Act; but it shall be lawful for Her Majesty in Council to revoke any Order in Council made under this Act.

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows :—

Short title and commencement of Act

1. This Act may be cited as 'The Patents, Designs, and Trade Marks Acts Amendment Act, 1894,' and shall come into force on the first day of January, One thousand eight hundred and ninety-five.

Repeal

2. (1) The second section of and the Schedule to 'The Patent Act Amendment Act, 1892,' and the fifty-fifth section of 'The Designs and Trade Marks Act, 1884,' are hereby repealed.

Saving rights

(2) Such repeal shall not affect—

- (a) Any letters of registration of a patent, nor any design or trade mark heretofore granted or registered; nor
- (b) Any applications, under the sections hereby repealed, pending at the time of the coming into operation of this Act for letters of registration of a patent or registration of any design or trade mark, and such applications may be completed as if this Act had not been passed.

(3) All letters of registration and every design or trade mark heretofore granted or registered or to be granted or registered under

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applications pending as aforesaid, shall continue to inure for the benefit of and to be enforceable by the holder or proprietor thereof respectively, in like manner as though this Act had not been passed.

3. (1) If Her Majesty is pleased, by Order in Council, to apply the provisions of the said section one hundred and three of the Imperial Act, called 'The Patents, Designs, and Trade Marks Act, 1883,' to the Colony of Western Australia, then any person who has applied for protection for any invention, design, or trade mark in England, or in any foreign State with the Government of which Her Majesty has made an arrangement under the said section, for mutual protection of inventions, designs, or trade marks, or any of them, shall be entitled to a patent for his invention, or to registration of his design or trade mark (as the case may be) under this Act, in priority to other applicants; and notwithstanding anything contained in 'The Patent Act, 1888,' or 'The Designs and Trade Marks Act, 1884,' such patent or registration shall take effect from the same date as the date of the application in England or such foreign State (as the case may be).

International arrangements for protection of inventions, designs and trade marks

52 Vic., 5, s. 17
48 Vic., 7, s. 7

(2) Such application shall be made in the case of a patent within seven months, and in the case of a design or trade mark within four months from such person applying for protection in England or the foreign State with which the arrangement is in force.

Duration of protection

(3) Nothing in this section contained shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification, or the actual registration of his design or trade mark (as the case may be) in Western Australia.

Nothing to be deemed an infringement before acceptance of complete specification or registration
Use within certain periods not to invalidate grant of patent or registration of design or trade mark

(4) The publication in Western Australia during the respective periods aforesaid of any description of the invention, or the use therein during such periods of the invention, or the exhibition or use therein during such periods of the design, or the publication therein during such periods of a description or representation of the design, or the use therein during such periods of the trade mark, shall not invalidate the patent granted for the invention, or the registration of the design or trade mark.

(5) The application for the grant of a patent or the registration of a design or the registration of a trade mark under this section shall be made in the same manner as an ordinary application under 'The Patent Act, 1888,' or 'The Designs and Trade Marks Act, 1884' (as the case may be).

Manner of applying for grant of patent or registration of design or trade mark

(6) In the case of trade marks, any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Act.

Trade mark applied for in country of origin may be registered

(7) The provisions of this section shall, in the case of foreign States, apply only in the case of those foreign States with respect to which Her Majesty from time to time, by Order in Council, declares the provisions of the aforesaid section one hundred and three of the said first recited Imperial Act to be applicable, and so long only in the case of each State as such order continues in force with respect to that State.

Application of this section to foreign States

4. (1) Whenever it appears to the Governor in Council that the Legislature of any British Possession has made satisfactory provision for the protection in such Possession of inventions, designs, and trade

Provision for intercolonial, &c., arrangements

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marks, or any of them, patented or registered in Western Australia, the Governor in Council may, by order, apply all or any of the provisions of the last preceding section relating to the protection of inventions, designs, and trade marks, patented or registered in England, with such variations or additions (if any) as to the Governor in Council seem fit, to inventions, designs, and trade marks, or any of them, patented or registered in such British Possession.

Date when order
to take effect

(2) An Order in Council under this section shall, from a date to be mentioned for the purpose in the order, take effect as if its provisions had been contained in this Act; but the Governor in Council may revoke any such order.

Interpretation

5. In this Act—

‘British
possession’

‘British Possession’ means any territory or place situate within Her Majesty’s dominions and not being or forming part of the United Kingdom or of the Channel Islands or of the Isle of Man; and all territories and places under one legislature as hereinafter defined are deemed to be one British Possession for the purposes of this Act; and

‘Legislature’

‘Legislature’ includes any person or persons who exercise legislative authority in the British Possession, and where there are local legislatures as well as a central legislature means the central legislature only.

Interpretation of
‘true and first
inventor,’ ‘true
inventor,’ and
inventor’

6. In this Act and ‘The Patent Act, 1888,’ and the Schedules thereto, unless the context otherwise requires,

The terms ‘true and first inventor,’ ‘true inventor,’ and ‘inventor’ shall, to the extent that the context does not express, include the person who is the actual inventor of any invention or his assigns, or if the actual inventor be dead his legal representatives, or (if the actual inventor, his legal representatives or assigns, is or are not resident in Western Australia), any person to whom such invention has been communicated by the actual inventor, his legal representatives or assigns, but shall not include a person importing an invention from any other colony or country without the authority of the actual inventor, his legal representatives or assigns.

Repeal of
section 7 of
52 Vic. No. 5

Persons entitled
to apply for
patent

7. Section seven of ‘The Patent Act, 1888,’ is hereby repealed, and the following provisions shall be substituted therefor:—

(1) Any person, whether a British subject or not, may make an application for a patent.

(2) Two or more persons may make a joint application for a patent, and a patent may be granted to them jointly.

(3) An applicant may be—

(a) The actual inventor; or

(b) His assigns; or

(c) The actual inventor jointly with the assigns of a part interest in the invention; or

(d) The legal representatives of a deceased actual inventor or of his assigns; or

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(e) Any person to whom the invention has been communicated by the actual inventor, his legal representatives or assigns (if the actual inventor, his legal representatives or assigns, is or are not resident in Western Australia).

8. Sub-section (2) of the eighth section of 'The Patent Act, 1888,' is hereby repealed, and the following provisions shall be substituted therefor:—

Requisites of application

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 the applicant, or one or more of the applicants, is or are in possession of an invention whereof the applicant or one or more of the applicants claims or claim to be the true and first inventor or inventors, and for which the applicant or applicants desires or desire to obtain a patent, and 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.

9. All patents granted before the passing of this Act to any person within the meaning of 'the true and first inventor,' as defined by this Act shall be deemed to have been duly granted, and shall be of full force and effect from the date of the sealing of the same, notwithstanding that such person was not legally entitled to apply for a patent under 'The Patent Act, 1888.'

Validity of patents in-
validly granted
under 'The
Patent Act,
1888'

10. Sub-section (2) of the fourteenth section of 'The Patent Act, 1888,' is hereby amended by omitting the word 'applicant' and inserting in lieu thereof the words 'person giving such notice.'

Amendment of
subsection 2 of
52 Vic., No. 5,
s. 14

11. The provisions of this Act, so far as they relate to patents, shall be incorporated and read with 'The Patent Act, 1888,' and so far as they relate to designs and trade marks with 'The Designs and Trade Marks Act, 1884.'

Incorporation

W. C. F. ROBINSON,
GOVERNOR.