

THE PATENTS AND DESIGNS ACT, 1911
(ACT NO. II OF 1911).

[1st March, 1911]

PRELIMINARY Short title, extent and commencement

1. (1) This Act may be called the Patents And Designs Act, 1911.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force on the first day of January, 1912.

Definitions

2. In this Act, unless there is anything repugnant in the subject or context,-

²[(1) “Attorney-General” means the Attorney General for Bangladesh]:

(2) “article” means (as respects designs) any article of manufacture and any substance, artificial or natural or partly artificial and partly natural:

³[* * *]

(4) “copyright” means the exclusive right to apply a design to any article in any class in which the design is registered:

(5) “design” means only the features of shape, configuration, pattern or ornament applied to any article by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in section 478, or property mark as defined in section 479 of the ⁴[Penal Code]:

(6) “District Court” has the meaning assigned to that expression by the Code of Civil Procedure, 1908:

(7) [Omitted by the Central Laws (Statute Reforms Ordinance, 1960) (Ordinance No. XXI of 1960).]

(8) “invention” means any manner of new manufacture and includes an improvement and an alleged invention:

(9) “legal representative” means a person who in law represents the estate of a deceased person:

(10) “manufacture” includes any art, process or manner or producing, preparing or making an article, and also any article prepared or produced by manufacture:

(11) “patent” means a patent granted under the provisions of this Act:

(12) “patentee” means the person for the time being entered on the register of patents kept under this Act as the grantee or proprietor of the patent:

(13) “prescribed” includes prescribed by rules under this Act:

(14) “proprietor of a new or original design,”-

(a) where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed; and

(b) where any person acquires the design or the right to apply the design to any article, either selersively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so required; and

(c) in any other case, means the author of the design; and

⁵[(15) “Registrar” means the Registrar of Patents, Designs and Trade Marks appointed under section 55 (1) of this Act:]

and where the property in, or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person.

PART I

PATENTS

Application for and Grant of Patent Application

3. (1) An application for a patent may be made by any person whether he is a citizen of Bangladesh or not, and whether alone or jointly with any other person.

(2) The application must be made in the prescribed form, and must be left at the Department of Patents, Designs and Trade Marks in the prescribed manner.

(3) The application must contain a declaration to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application one at least of the applicants, claims to be the true and first inventor or the legal representative or assign of such inventor and for which he desires to obtain a patent, and must be accompanied by either a provisional or complete specification and by the prescribed fee.

(4) Where the true and first inventor is not a party to the application, the application must contain a statement of his name, and such particulars for his identification as may be prescribed, and the applicant must show that he is the legal representative or assign of such inventor.

Specifications

4. (1) A provisional specification must describe the nature of the invention.

(2) A complete specification must particularly describe and ascertain the nature of the invention and the manner in which the same is to be performed.

(3) 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.

(4) Where the Registrar deems it desirable, he may require that suitable drawings shall be supplied at any time before the acceptance of the application, and such drawings shall be deemed to form part of the complete specification.

(5) If in any particular case the Registrar considers that an application should be further supplemented by a model or sample of anything illustrating the invention or alleged to constitute an invention, such model or sample as he may require shall be furnished before the acceptance of the application, but such model or sample shall not be deemed to form part of the specification.

(6) The Registrar may, where the application was accompanied by a specification purporting to be a complete specification, if the applicant so requests, treat the specification as a provisional specification and proceed with the application accordingly.

Time for leaving complete specification

⁶[4A. (1) If the applicant does not leave a complete specification with his application, he may leave it at any subsequent time within nine months from the date of the application:

Provided that the said nine months shall be extended to such period, not exceeding ten months from the date of the application, as may be specified in a request made by the applicant to the Registrar, if the request is made and the prescribed fee is paid within the period so specified.

(2) If the complete specification is not left within the period allowable under sub-section (1), the application shall be deemed to be abandoned at the expiration of ten months from the date thereof.

Provisional protection

4B. (1) An invention may, during the period between the date of an application for a patent therefor and the date of sealing a patent on that application, be used and published without prejudice to that patent, and such protection from the consequences of use and publication is in this Act referred to as provisional protection.

(2) In this section, the expression “date of an application for a patent” means, as respects an application which is post-dated or ante-dated under this Act, the date to which the application is so post-dated or ante-dated, and means, as respects any other application, the date on which it is actually made.]

Proceedings upon application

5. (1) The Registrar shall refer to an examiner every application in respect of which a complete specification has been filed and if satisfied on the report of the examiner that-

- (a) the nature of the invention or the manner in which it is to be performed is not particularly described and ascertained in the complete specification, or
- (b) the application, specification and drawings have not been prepared in the prescribed manner, or
- (c) the title of the specification does not sufficiently indicate the subject-matter of the invention, or
- (d) the statement of claim does not sufficiently define the invention, or
- ⁷[(dd) where a complete specification has been left after a provisional specification, the invention particularly described in the complete specification is not substantially the same as that which is described in the provisional specification, or
- (e) the invention as described and claimed is prima facie not a manner of new manufacture or improvement, or
- (f) the specification relates to more than one invention, or
- (g) in the case of an application claiming priority under section 78A, the specification describes and claims an invention substantially larger than or substantially different from the invention disclosed in the specification filed with the application made outside Bangladesh by virtue of which priority is claimed, or
- (h) in the case of an application for a patent of addition under section 15A, the invention described and claimed in the specification is not an improvement or modification of that described and claimed in the original specification,

he may refuse to accept the application or require that the application, specification or drawings be amended before he proceeds with the application; and in the later case the application shall, if the Registrar so directs, bear date as from the time when the requirement is complied with:

Provided that, when a specification comprises more than one invention, the application shall, if the Registrar or the applicant so requires, be restricted to one invention and the other inventions may be made the subject-matter of fresh applications; and any such fresh application shall be proceeded with as a substantive application, but the Registrar may, in his discretion, direct that any such fresh application made before the acceptance of the original application shall bear the date of the original application or such later date as he may fix, and the fresh application shall be deemed, for the purposes of this Act, to have been made on the date which it bears in accordance with such direction:

Provided further that where a complete specification is left after a provisional specification, the Registrar may, if the applicant so requests, cancel the provisional specification and direct that the application shall be deemed to have been made on the

date on which the complete specification was left, and proceed with the application accordingly.

(1A) If the Registrar considers, at any time before the acceptance of an application, that the invention claimed therein has been wholly or in part claimed in a specification published on or after the date which the patent applied for would bear if granted, appertaining to an application for a patent which if granted will be of prior date to the patent applied for, he may require that the applicant's specification be amended by the insertion of a reference to such other specification, by way of notice to the public.

(2) Where the Registrar refuses to accept an application or requires an amendment or the insertion of a reference, the applicant may appeal from his decision to the Government.

(3) The investigations required by this section shall not be held in any way to guarantee the validity of any patent, and no liability shall be incurred by the Government or any officer by reason of, or in connection with, any such investigation, or any proceeding consequent thereon.

(4) Unless an application is accepted within eighteen months from the date of the application, the application shall (except where an appeal has been lodged) be deemed to have been refused:

Provided that where, before, or within three months after, the expiration of the said period of eighteen months, a request is made to the Registrar for an extension of time, the application shall, on payment of the prescribed fee, be continued for any period so requested not exceeding in all three months from the expiration of the said period of eighteen months.

Advertisement on acceptance of application

6. On the acceptance of an application the Registrar shall give notice thereof to the applicant and shall advertise the acceptance; and the application and specifications with the drawings (if any) shall be open to public inspection.

Effect of acceptance of application

7. After the acceptance of an application 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 application:

Provided that the applicant shall not be entitled to institute any proceedings for infringement until the patent has been sealed.

[Repealed]

8. [Repealed by section 4 of the Indian Patents and Designs (Amendment) Act, 1930 (Act No. VII of 1930).]

Opposition to grant of patent

9. (1) Any person may, on payment of the prescribed fee, at any time within four months from the date of the advertisement of the acceptance of an application, give notice at the Department of Patents, Designs and Trade Marks of opposition to the grant of the patent

on any of the following grounds, namely:-

(a) that the applicant obtained the invention from him, or from a person of whom he is the legal representative or assign; or

(b) that the invention has been claimed in any specification filed in Bangladesh which is or will be of prior date to the patent, the grant of which is opposed; or

(c) that the nature of the invention or the manner in which it is to be performed is not sufficiently or fairly described and ascertained in the specifications; or

(d) that the invention has been publicly used in any part of Bangladesh or has been made publicly known in any part of Bangladesh; or

(e) that the complete specification describes or claims an invention other than that described in the provisional specification, and that such other invention either forms the subject of an application made by the opponent for a patent which if granted would bear a date in the interval between the date of the application and the leaving of the complete specification, or has been made available to the public by publication in any document published in Bangladesh in that interval;

but on no other ground.

(2) Where such notice is given, the Registrar shall give notice of the opposition to the applicant, and shall, on the expiration of those four months, after hearing the applicant and the opponent, if desirous of being heard, decide on the case.

(3) The decision of the Registrar shall be subject to appeal to the Government.

Grant and sealing of patent

10. (1) If there is no opposition, or, in case of opposition, if the determination is in favour of the grant of a patent, a patent shall, on payment of the prescribed fee, be granted, subject to such conditions (if any) as the Government thinks expedient, to the applicant, or in the case of a joint application to the applicants jointly, and the Registrar shall cause the patent to be sealed with the seal of the Department of Patents, Designs and Trade Marks.

(1A) Notwithstanding anything contained in sub-section (1), where-

(a) an applicant has agreed in writing that on the grant to him of a patent he will assign it to another party or to a joint applicant and refuses to proceed with the application, or

(b) disputes arise between joint applicants as to proceeding with an application,

the Registrar, if he is satisfied of the existence of such agreement or, in any other case, that any joint applicant or applicants ought to be allowed to proceed alone, may direct that such other party or joint applicant or applicants may proceed with the application

accordingly and may grant a patent to him or them, as the case may be:

Provided that-

(i) the Controller shall not give any such direction until every party interested has had an opportunity of being heard by him, and

(ii) an appeal from any such direction shall lie to the Government.

(2) A patent shall be sealed as soon as may be, and not after the expiration of twenty-four months from the date of application:

Provided that,-

(a) where the Registrar has allowed an extension of the time within which an application may be accepted a further extension of four months after the said, twenty-four months shall be allowed for the sealing of the patent;

(b) where the sealing is delayed by an appeal to the Government, or by opposition to the grant of the patent, or by any proceedings taken for obtaining a direction of the Registrar under the provisions of sub-section (1A), or by reason of the Registrar, in exercise of the powers given to him by ⁸[any other law for the time being in force], having omitted to do or delayed the doing of anything relating to the application the patent may be sealed at such time as the Registrar may direct;

(c) where the patent is granted to the legal representative of an applicant who has died before the expiration of the time which would otherwise be allowed for sealing the patent, the patent may be sealed at any time within twelve months after the date of his death or at such later time as the Registrar may think fit;

(d) where for any reason a patent cannot be sealed within the period allowed by any of the foregoing provisions of this section that period may on payment of the prescribed fee and on compliance with the prescribed conditions be extended to the extent applied for but not exceeding three months.

Date of patent

11. Except as otherwise expressly provided by this Act, a patent shall be dated and sealed as of the date of the application:

Provided that no proceedings shall be taken in respect of an infringement committed before the advertisement of the acceptance of the application.

Effect, extent and form of patent

12. (1) A patent sealed with the seal of the Department of Patents, Designs and Trade Marks shall, subject to the other provisions of this Act, confer on the patentee the exclusive privilege of making, selling and using the invention throughout Bangladesh and of authorizing others so to do.

(2) Every patent may be in the prescribed form and shall be granted for one invention only, but the specification may contain more than one claim; and it shall not be competent for any person in a suit or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention.

Fraudulent applications for patents

13. (1) A patent granted to the true and first inventor or his legal representative or assign shall not be invalidated by an application in fraud of him, or by protection obtained thereon or by any use or publication of the invention subsequent to that fraudulent application during the period of protection.

(2) Where a patent has been revoked by the High Court Division on the ground that it has been obtained in fraud of the true and first inventor, or where the grant of a patent has been refused by the Registrar under section 9 on the ground stated in clause (a) of subsection (1) of that section, the Registrar may, on the application of the true inventor or his legal representative or assign made in accordance with the provisions of this Act, grant to him a patent for the whole or any part of the invention, and the patent so granted shall bear the same date as the patent so revoked or, in the case of a patent the grant of which has been refused, the same date as would have been borne by the patent if it had been granted:

Provided that no suit shall be brought for any infringement of the patent so granted committed before the actual date when such patent was granted.

Single patent for cognate inventions

⁹[13A. (1) Where the same applicant has put in two or more provisional specifications for inventions which are cognate or modifications one of the other, and has obtained thereby concurrent provisional protection for the same, and the Registrar is of opinion that the whole of such inventions are such as to constitute a single invention and may properly be included in one patent, he may allow one complete specification in respect of the whole of such applications and grant a single patent thereon.

(2) Such patent shall bear the date of the earliest of such applications, but in considering the validity of the same, and in determining other questions under this Act, the Court or the Registrar, as the case may be, shall have regard to the respective dates of the provisional specifications relating to the several matters claimed in the complete specification.]

Term of Patent Term of patent

14. (1) The term limited in every patent for the duration thereof shall, save as otherwise expressly provided by this Act, be sixteen years from its date.

(1A) and (1B) [Omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).]

(2) A patent shall, notwithstanding anything therein or in this Act, cease if the patentee fails to pay the prescribed fees within the prescribed times:

Provided that where the patentee, before, or within three months after, the expiration of

the time for payment, applies to the Registrar for an extension of time, the patent shall, on payment of such additional fee as may be prescribed, be continued or revived, as the case may be, for any period so applied for not exceeding in all three months from the expiration of the time for payment.

(3) If any proceeding is taken in respect of an infringement of the patent committed after a failure to pay any fee within the prescribed time, and before any enlargement thereof, the Court before which the proceeding is taken may, if it thinks fit, refuse to award any damages in respect of such infringement.

Extension of term of patent

15. (1) A patentee may, present a petition to the Government praying that his patent may be extended for a further term; but such petition must be left at the Department of Patents, Designs and Trade Marks at least six months before the time limited for the expiration of the patent and must be accompanied by the prescribed fee and must be advertised by the patentee within the prescribed time and in the prescribed manner.

(2) Any person may within such time as may be prescribed and on payment of the prescribed fee give notice to the Registrar of objection to the extension.

(3) Where a petition is presented under sub-section (1), the Government may, as it thinks fit, dispose of the petition itself or refer it to the High Court Division for decision.

(4) If the petition be referred to the High Court Division, then on the hearing of such petition under this section, the patentee, and any person who has given notice under sub-section (2) of objection, shall be made parties to the proceeding, and the Registrar shall be entitled to appear and be heard.

(5) The Government or the High Court Division to which a petition is referred shall in considering the petition have regard to the nature and merits of the invention in relation to the public, to the profits made on the Patent and to all the circumstances of the case.

(6) If it appears to the Government or to the High Court Division when the petition is referred to it that the patent has not been sufficiently remunerative, the Government or the High Court Division as the case may be, may by order extend the term of the patent for a further term not exceeding five or in exceptional cases ten years or may order the grant of a new patent for such term not exceeding ten years as may be specified in the order and subject to any restriction, conditions and provisions which the Government or the High Court Division, as the case may be, may think fit.

Patents of addition

¹⁰[15A. (1) Where a patent for an invention has been applied for or granted, and the applicant or the patentee, as the case may be, applies for a further patent in respect of any improvement in or modification of the invention, he may in his application for the further patent request that the term limited in that patent for the duration thereof be the same as that of the original patent or so much of that term as is unexpired, and, if he does so, a patent (hereinafter referred to as a patent of addition) may be granted for such term as aforesaid.

(2) Save as otherwise expressly provided by this Act, a patent of addition shall remain in force as long as the patent for the original invention remains in force, but no longer, and in respect of a patent of addition no fees shall be payable for renewal:

Provided that if the patent for the original invention is revoked, then the patent of addition shall, if the authority by which it is revoked so orders, become an independent patent, and the fees payable, and the dates when they become payable, shall be determined by its date, but its duration shall not exceed the unexpired term of the patent for the original invention.

(3) The grant of a patent of addition shall be conclusive evidence that the invention is a proper subject for a patent of addition, and the validity of the patent shall not be questioned on the ground that the invention ought to have been the subject of an independent patent.]

Restoration of lapsed patent

16. (1) Where any patent has ceased owing to the failure of the patentee to pay any prescribed fee within the prescribed time, the patentee may apply to the Registrar in the prescribed manner for an order for the restoration of the patent.

(2) Every such application shall contain a statement of the circumstances which have led to the omission of the payment of the prescribed fee.

(3) If it appears from such statement that the omission was unintentional or unavoidable and that no undue delay has occurred in the making of the application, the Registrar shall advertise the application in the prescribed manner, and within such time as may be prescribed any person may give notice of opposition at the Department of Patents, Designs and Trade Marks.

(4) Where such notice is given the Registrar shall notify the applicant thereof.

(5) After the expiration of the prescribed period the Registrar shall hear the case and, subject to an appeal to the Government issue an order either restoring the patent subject to any conditions and restrictions deemed to be advisable or dismissing the application:

Provided that in every order under this section restoring a patent such provisions as may be prescribed shall be inserted for the protection of persons who may have availed themselves of the subject-matter of the patent after the patent had ceased.

Amendment of Application or Specification Amendment of application or specification by Registrar

17. (1) An applicant or a patentee may at any time, by request in writing left at the Department of Patents, Designs and Trade Marks and accompanied by the prescribed fee, seek leave to amend his application or specification, including drawings forming part thereof, by way of disclaimer, correction or explanation, stating the nature of, and the reasons for, the proposed amendment.

(2) If the application for a patent has not been accepted, the Registrar shall determine whether and subject to what conditions (if any) the amendment shall be allowed.

(3) In any other case the request and the nature of the proposed amendment shall be advertised in the prescribed manner, and at any time within three months from its first advertisement any person may give notice at the Department of Patents, Designs and Trade Marks of opposition to the amendment.

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

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

(6) The decision of the Registrar in either case shall be subject to an appeal to the Government.

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

(8) 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 be advertised in the prescribed manner, and shall in all Courts and for all purposes be deemed to form part of the application or specification.

(9) This section shall not apply when and so long as any suit for infringement or proceeding before a Court for the revocation of the patent is pending.

Amendment of specification by the Court

18. In any suit for infringement of a patent or proceeding before a Court for the revocation of a patent the Court may by order allow the patentee to amend his specification by way of disclaimer correction or explanation in such manner, and subject to such terms as to costs, advertisement or otherwise, as the Court may think fit:

Provided that no amendment shall be so 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 the amendment, and where an application for such an order is made to the Court notice of the application shall be given to the Registrar, and the Registrar shall have the right to appear and be heard.

Restriction on recovery of damages

19. Where an amendment of a specification by way of disclaimer, correction or explanation has been allowed under this Act, no damages shall be given in any suit in respect of the use of the invention before the date of the decision allowing the amendment 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.

Register of Patents Register of Patents

20. (1) There shall be kept at the Department of Patents, Designs and Trade Marks 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 be prescribed.

(2) The register of inventions and address book existing at the commencement of this Act shall be incorporated with, and form part of, the register of patents under this Act.

(3) The register of patents shall be prima facie evidence of any matters by this Act directed or authorised to be inserted therein.

(4) Copies of deeds, licenses and any other documents affecting the proprietorship in any patent or in any license thereunder, must be supplied to the Registrar in the prescribed manner for filing in the Department of Patents, Designs and Trade Marks.

Government Patent to bind Government

¹¹[21. (1) Subject to the other provisions of this section, a patent shall have to all intents the like effect as against the Government as it has against any person.

(2) The officers or authorities administering any department of Government may, by themselves or by such of their agents, contractors or others as may be authorised in writing by them, at any time after the application, and after giving notice to the applicant or patentee, make, use or exercise the invention for the service of the Government on such terms as may, either before or after the use thereof, be agreed on, with the approval of the Government between such officers or authorities and the applicant or patentee, or, in default of agreement, as may be settled in the manner hereinafter provided. And the terms of any agreement or license concluded between the applicant or patentee and any person other than such officers or authorities, shall be inoperative so far as concerns the making, use or exercise of the invention for the service of the Government.

(3) Where an invention which is the subject of any patent has, before the date of the patent, been duly recorded in a document by, or tried by or on behalf of, the officers or authorities administering any department of Government (such invention not having been communicated directly or indirectly by the applicant or patentee), such officers or authorities, or such of their agents, contractors, or others, as may be authorised in writing by them, may, after giving notice to the applicant or patentee, make, use or exercise the invention so recorded or tried for the service of the Government, free of any royalty or other payment to the applicant or patentee, notwithstanding the existence of the patent. If, in the opinion of such officers or authorities, the disclosure to the applicant or patentee, as the case may be, of the document recording the invention, or the evidence of the trial thereof, if required, would be detrimental to the public interest, it may be made confidentially to counsel on behalf of the applicant or patentee, or to any independent expert mutually agreed upon.

(4) In the event of any dispute as to the making, use or exercise of an invention under this

section, or the terms therefor, or as to the existence or scope of any record or trial as aforesaid, the matter shall be referred to the High Court Division for decision, who shall have power to refer the whole matter or any question or issue of fact arising thereon to be tried before a special or official referee or an arbitrator upon such terms as it may direct. The Court, referee or arbitrator, as the case may be, may, with the consent of the parties, take into consideration the validity of the patent for the purposes only of the reference and for the determination of the issues between the applicant or patentee and such officers or authorities. The Court, referee, or arbitrator, further, in settling the terms as aforesaid, shall be entitled to take into consideration any benefit or compensation which the applicant or patentee, or any other person interested in the patent, may have received directly or indirectly from the Government or from such officers or authorities in respect of such patent:

Provided that, if the inventor or patentee is a Government servant and the subject-matter of the invention is certified by the Government to be connected with work done in the course of such service, any such dispute shall be settled by the Government after hearing the applicant or patentee and any other person having an interest in the invention or patent.

(5) The right to use an invention for the services of the Government under the provisions of this section, or any provisions for which this section is substituted, shall include, and shall be deemed always to have included, the power to sell any articles made in pursuance of such right which are no longer required for the services of the Government.

(6) Nothing in this section shall affect the right of the Government or of any person deriving title directly or indirectly from the Government to sell or use any articles forfeited under any law for the time being in force relating to customs or excise.

Assignment of patent to the Government

21A. (1) The inventor of any improvement in instruments or munitions of war may (either for or without valuable consideration) assign to the Government all the benefit of the invention and of any patent obtained or to be obtained for the invention; and the Government may be a party to the assignment.

(2) The assignment shall effectually vest the benefit of the invention and patent in the Government, 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 or on behalf of the Government.

(3) Where any such assignment has been made, the Government may, at any time before the publication of the specification, certify to the Registrar 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 Government so certify, the application and specifications, with the drawings (if any) and any amendment of the specification and any copies of such documents and

drawings, shall instead of being left in the ordinary manner at the Department of Patents, Designs and Trade Marks, be delivered to the Registrar in a packet sealed by authority of the Government.

(5) The packet shall, until the expiration of the 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 Government.

(6) The sealed packet shall be delivered at any time during the continuance of the patent to any person authorised by the Government to receive it, and shall, if returned to the Registrar, be again kept sealed by him.

(7) On the expiration of the term of the patent the sealed packet shall be delivered to the Government.

(8) Where the Government certifies as aforesaid after an application for a patent has been left at the Department of Patents, Designs and Trade Marks but before the publication of the specification, the application and specifications, with the drawings (if any) shall be forthwith placed in a packet sealed by authority of the Registrar, and the packet shall be subject to the foregoing provisions respecting a packet sealed by authority of the Government.

(9) No proceeding by petition or otherwise shall lie for revocation of a patent granted for an invention in relation to which a certificate has been given by the Government 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 otherwise provided in this section, the provisions of this Act shall apply in respect of any such invention and patent as aforesaid.

(11) The Government may at any time 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 Government or to any person or persons authorised by the Government 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.]

Compulsory Licenses and Revocation Compulsory licenses and revocation

22. (1) Any person interested may present a petition to the Government which shall be left at the Department of Patents, Designs and Trade Marks, together with the prescribed fee, alleging that the demand for a patented article in Bangladesh is not being met to an adequate extent and on reasonable terms and praying for the grant of a compulsory license, or, in the alternative, for the revocation of the patent.

(2) The Government shall consider the petition, and if the parties do not come to an arrangement between themselves the Government may, as it thinks fit either dispose of the petition itself or refer it to the High Court Division for decision.

(3) The provisions of sub-section (4) of section 15, prescribing the procedure to be followed in the case of references to the Court under that section, shall apply in the case of references made to the Court under this section.

(4) If the Government is of opinion, or, where a reference has been made under sub-section (2) to the High Court Division, that Court finds that the demand for the patented article in Bangladesh is not being met to an adequate extent and on reasonable terms, the patentee may be ordered to grant licenses on such terms as the Government or the High Court Division, as the case may be, may think just, or, if the Government or the High Court Division is of opinion that the demand will not be adequately met by the grant of licenses, the patent may be revoked by order of the Government or the High Court Division:

Provided that an order of revocation shall not be made before the expiration of four years from the date of the patent, or if the patentee gives satisfactory reasons for his default.

(5) For the purposes of this section the demand for a patented article shall not be deemed to have been met to an adequate extent and on reasonable terms-

(a) if by reason of the default of the patentee to manufacture to an adequate extent and supply on reasonable terms the patented article, or any parts thereof which are necessary for its efficient working, or to carry on the patented process to an adequate extent or to grant licenses on reasonable terms, any existing trade or industry or the establishment of any new trade or industry in Bangladesh is unfairly prejudiced,; or

(b) if any trade or industry in Bangladesh is unfairly prejudiced by the conditions attached by the patentee to the purchase, hire or use of the patented article or to the using or working of the patented process.

Revocation of patents worked outside Bangladesh

23. (1) At any time not less than four years after the date of a patent granted under this Act, any person may apply to the Government for relief under this section on the ground that the patented article or process is manufactured or carried on exclusively or mainly outside Bangladesh.

(2) The Government shall consider the application, and, if after inquiry it is satisfied-

(a) that the allegations contained therein are correct; and

(b) that the applicant is prepared, and is in a position, to manufacture or carry on the patented article or process in Bangladesh; and

(c) that the patentee refuses to grant a license on reasonable terms,

then, subject to the provisions of this section, and unless the patentee proves that the patented article or process is manufactured or carried on to an adequate extent in Bangladesh, or gives satisfactory reasons why the article or process is not so manufactured or carried on, the Government may make an order-

(a) revoking the patent either-

(i) forthwith; or

(ii) after such reasonable interval as may be specified in the order, unless in the meantime it is shown to its satisfaction that the patented article or process is manufactured or carried on within Bangladesh to an adequate extent; or

(b) ordering the patentee to grant a license to the applicant which may be a license exclusive to him or otherwise as the Government may direct.

(3) No order revoking a patent shall be made under the last sub-section which is at variance with any treaty, convention, arrangement or engagement with any foreign country ¹²[* * *].

(4) The Government may, on the application of the patentee, extend the time limited in any order made under sub-section (2), clause (ii), for such period not exceeding two years as it may specify in a subsequent order, or revoke any order made under sub-section (2), clause (ii), or any subsequent order if sufficient cause is in its opinion shown by the patentee.

Operation of order under section 22 or section 23

¹³[23A. An order of the High Court Division under section 22 or of the Government under section 22 or section 23, directing the grant of any license shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a license and executed by the patentee and all other necessary parties.]

Power of Registrar to revoke surrendered patent

24. A patentee may at any time, by giving notice in the prescribed manner to the Registrar, offer to surrender his patent, and the Registrar may, if after giving notice of the offer and hearing all parties who desire to be heard he thinks fit, accept the offer, and thereupon make an order for the revocation of the patent.

Revocation of patent on public grounds

25. A patent shall be deemed to be revoked if the Government declares, by notification in the official Gazette the patent or the mode in which it is exercised to be mischievous to the State or generally prejudicial to the public.

Legal Proceedings Petition for revocation of patent

26. (1) Revocation of a patent in whole or in part may be obtained on petition to or on a counter claim in a suit for infringement before the High Court Division on all or any of the following grounds, namely:-

- (a) that the invention has been the subject of a valid prior grant of a patent in Bangladesh;
- (b) that the true and first inventor or his legal representative or assign was not the applicant or one of the applicants for the patent;
- (c) that the patent was obtained in fraud of the rights of the person applying for the revocation or of any person under or through whom he claims;
- (d) that the invention was not, at the date of the patent, a manner of new manufacture or improvement;
- (e) that the invention does not involve any inventive step, having regard to what was known or used prior to the date of the patent;
- (f) that the invention is of no utility;
- (g) that the complete specification does not sufficiently and fairly describe and ascertain the nature of the invention and the manner in which the invention is to be performed;
- (h) that the complete specification does not sufficiently and clearly ascertain the scope of the invention claimed;
- (i) that the patent was obtained on a false suggestion or representation;
- (j) that the primary or intended use or exercise of the invention is contrary to law;
- (k) that the patentee has contravened, or has not complied with, the conditions contained in the patent;
- (l) that the complete specification does not disclose the best method of performance of the invention known to the applicant for the patent at the time when the specification was left at the Department of Patents, Designs and Trade Marks.
- (m) that prior to the date of the patent, the patentee or other persons (not being authorities administering any department of Government, or the agents or contractors of, or any other persons authorised in that behalf by the Government secretly worked the invention on a commercial scale (and not merely by way of reasonable trial or experiment) in Bangladesh, and thereby made direct or indirect profits in excess of such amount as the Court may in consideration of all the circumstances of the case deem reasonable;
- (n) that the invention claimed in the complete specification is not the same as that contained in the provisional specification, and that the invention claimed, so far as it is not contained in the provisional specification, was not new at the date when the complete specification was filed:

Provided that this sub-section shall have effect in relation to the ground of revocation

specified-

(i) in clause (b), subject to the provisions of section 78A, or

(ii) in clause (d), subject to the provisions of sub-section (1) of section 13, sub-section (12) of section 21A, section 38 and section 40.

(2) A petition for revocation of a patent may be presented—

(a) by the ¹⁴[Attorney General] or any person authorized by him; or

(b) by any person alleging-

(i) that the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims; or

(ii) that he, or any person under or through whom he claims, was the true and first inventor of any invention included in the claim of the patentee; or

(iii) 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 Bangladesh, before the date of the patent, anything claimed by the patentee as his invention.

(3) The High Court Division may, irrespective of any provisions of the Code of Civil Procedure, 1908, in this behalf, require any person, other than the ¹⁵[Attorney General] or any person authorised by him, applying for the revocation of a patent to give security for the payment of all costs incurred or likely to be incurred by any person appearing to oppose the petition.

Notice of proceedings to persons interested

27. (1) Notice of any petition for revocation of a patent under section 26 shall be served on all persons appearing from the register to be proprietors of that patent or to have shares or interests therein, and it shall not be necessary to serve the notice on any other person.

(2) The notice shall be deemed to be sufficiently served if a copy thereof is sent by post in a registered letter directed to the person and place for the time being stated in the register.

Framing issue for trial before other Courts

28. (1) The High Court Division may, if it thinks fit, direct an issue for the trial, before itself, ¹⁶[* * *] or any District Court, of any question arising upon a petition to itself under section 26, and the issue shall be tried accordingly.

¹⁷[* * *].

(3) If the issue is directed to a District Court, the finding of that Court shall not be subject to appeal, but the evidence taken upon the trial shall be recorded and a copy thereof,

certified by the Judge of the Court, shall be transmitted, together with any remarks which he may think fit to make thereon, to the High Court Division directing the issue, and the High Court Division may thereupon act upon the finding of the District Court, or dispose of the petition upon the evidence recorded, or direct a new trial, as the justice of the case may require.

Suits for infringement of patents

29. (1) A patentee may institute a suit in a District Court having jurisdiction to try the suit against any person who, during the continuance of a patent acquired by him under this Act in respect of an invention, makes, sells or uses the invention without his license, or counterfeits it, or imitates it:

Provided that where a counter claim for revocation of the patent is made by the defendant, the suit, along with the counter claim, shall be transferred to the High Court Division for decision.

(2) Every ground on which a patent may be revoked under section 26 shall be available by way of defence to a suit for infringement.

Exemption of innocent infringer from liability for damages

30. A patentee shall not be entitled to recover any damages in respect of any infringement of a patent granted after the commencement of this Act from any defendant who proves that at the date of the infringement he was not aware, nor had reasonable means of making himself aware, of the existence of the patent, and the marking of an article with the word "patent," "patented," or any word or words expressing or implying that a patent has been obtained for the article, stamped, engraved, impressed on, or otherwise applied to the article, shall not be deemed to constitute notice of the existence of the patent unless the word or words are accompanied by the year and number of the patent:

Provided that nothing in this section shall affect any proceedings for an injunction.

Order for inspection, etc, in suit

31. In a suit for infringement of a patent, the Court 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 may see fit.

Certificate of validity questioned and costs thereon

32. In a suit for infringement of a patent the Court may certify that the validity of the patent came in question, and if the Court so certifies, then in any subsequent suit in that Court for infringement of the same patent the plaintiff, on obtaining a final order or judgment in his favour, shall, unless the Court trying the suit otherwise directs, have his full costs, charges and expenses of and incidental to the said suit properly incurred.

Transmission of decrees and orders to the Registrar

33. A Court making a decree in a suit under section 29 or an order on a petition under section 26 shall send a copy of the decree or order, as the case may be, to the Registrar, who shall cause an entry thereof and reference thereto to be made in the register of patents.

[Omitted]

34. [Omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).]

Hearing with assessor

35. (1) In a suit or proceeding for infringement or revocation of a patent, the Court may, if it thinks fit, and shall on the request of all the parties to the proceedings, call in the aid of an assessor specially qualified, and try the case wholly or partially with his assistance.

(2) A Court exercising appellate jurisdiction in respect of such suit or proceeding may, if it thinks fit, call in the aid of an assessor as aforesaid.

(3) The remuneration, if any, to be paid to an assessor under this section shall in every case be determined by the Court and be paid by it as part of the expenses of the execution of this Act.

Grant of relief in respect of particular claims

¹⁸[35A. Notwithstanding anything contained in section 19, if the Court in any action for infringement of a patent finds that any one or more of the claims in the specification in respect of which the infringement is alleged are valid, it may, subject to its discretion as to costs and as to the date from which damages should be reckoned and to such terms as to amendment as it may deem desirable, grant relief in respect of any of such claims which are infringed without regard to the invalidity of any other claim in the specification. In exercising such discretion the Court may take into consideration the conduct of the parties in inserting such invalid claims in the specification or permitting them to remain there.]

Remedy in case of groundless threats of legal proceedings

36. Where any person claiming to have an interest in a patent by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged infringement of the patent, any person aggrieved thereby may bring a suit against him in a District Court having jurisdiction to try the suit, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as he has sustained thereby, if the alleged infringement to which the threats related was not in fact an infringement of the patent:

Provided that this section shall not apply if an action for infringement of the patent is commenced and prosecuted with due diligence.

Miscellaneous Grant of patents to two or more persons

37. Where, after the commencement of this Act, a patent is granted to two or more persons jointly, they shall, unless otherwise specified in the patent, be treated for the purpose of the devolution of the legal interest therein as joint tenants, but, subject to any contract to the contrary, each of such persons shall be entitled to use the invention for his own profit without accounting to the others, but shall not be entitled to grant a license without their consent, and, if any such person dies, his beneficial interest in the patent shall devolve on his legal representatives.

Public use or knowledge of invention

38. The public use or knowledge of an invention in Bangladesh before the date of the application for a patent thereon shall not invalidate the patent granted thereon if the knowledge has been obtained surreptitiously or in fraud of the true and first inventor or his legal representative or assign or has been communicated to the public in fraud of such inventor or his legal representative or assign or in breach of confidence:

Provided that such inventor or his legal representative or assign has not acquiesced in the public use of his invention, and that he applies for a patent within six months after the commencement of such use.

Disconformity

¹⁹[38A. A patent shall not be held to be invalid on the ground that the complete specification claims a further or different invention to that contained in the provisional, if the invention therein claimed, so far as it is not contained in the provisional, was novel at the date when the complete specification was put in, and the applicant for the patent was the true and first inventor thereof, or the legal representative or assignee of such inventor.]

Loss or destruction of patent

39. 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, on payment of the prescribed fee, seal a duplicate thereof.

Provisions as to exhibitions and readings before learned societies

40. The exhibition of an invention at an industrial or other exhibition to which the provisions of this section have been extended by the Government by notification in the official Gazette, 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 or the publication of any description thereof, during or after the period of the holding of the exhibition, by any person elsewhere without the privity or consent of the inventor or the reading of a paper by an inventor before a learned society, or the publication of that paper in the society's transactions shall not prejudice the right of the inventor to apply for and obtain a patent in respect of the invention, or the validity of any patent granted on the application:

Provided that-

(a) the exhibitor exhibiting the invention or the inventor reading the paper or authorising the publication thereof, as the case may be, gives to the Registrar previous notice in the prescribed form; and

(b) the application for a patent is made before or within six months from the date of first exhibiting the invention or of the reading of the paper, as the case may be, or when it has not been so read, of the said publication.

Models to be furnished to the National Museum of Bangladesh

41. The National Museum of Bangladesh may at any time require a patentee to furnish it with a model or sample of his invention on payment to the patentee of the cost of the manufacture of the model or sample, the amount to be settled, in case of dispute, by the Government.

Foreign vessels in Bangladesh waters

42. (1) A patent shall not prevent the use of an invention for the purposes of the navigation of a foreign vessel within the Jurisdiction of any Court in Bangladesh, or the use of an invention in a foreign vessel within that jurisdiction, provided it is not used therein for or in connection with the manufacture or preparation of anything intended to

be sold in or exported from Bangladesh.

(2) This section shall not extend to vessels of any foreign State of which the laws do not confer corresponding rights with respect to the use of inventions in Bangladesh vessels while in the ports of that State, or in the waters within the jurisdiction of its Courts.

PART II

DESIGNS

Registration of Designs Application for registration of designs

43. (1) The Registrar may, on the application of any person claiming to be the proprietor of any new or original design not previously published in Bangladesh, register the design under this Part.

(2) The application must be made in the prescribed form and must be left at the Department of Patents, Designs and Trade Marks in the prescribed manner and must be accompanied by the prescribed fee.

(3) The same design may be registered in more than one class, and, in case of doubt as to the class in which a design ought to be registered, the Registrar may decide the question.

(4) The Registrar may, if he thinks fit, refuse to register any design presented to him for registration; but any person aggrieved by any such refusal may appeal to the Government.

(5) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within the prescribed time shall be deemed to be abandoned.

(6) A design when registered shall be registered as of the date of the application for registration.

Registration of designs in new classes

44. Where a design has been registered in one or more classes of goods, the application of the proprietor of the design to register it in some one or more other classes shall not be refused, nor shall the registration thereof be invalidated-

(a) on the ground of the design not being a new or original design, by reason only that it was so previously registered; or

(b) on the ground of the design having been previously published in Bangladesh, by reason only that it has been applied to goods of any class in which it was so previously registered:

Provided that such subsequent registration shall not extend the period of copyright in the design beyond that arising from previous registration.

Certificate of registration

45. (1) The Registrar shall grant a certificate of registration to the proprietor of the design when registered.

(2) The Registrar may, in case of loss of the original certificate, or in any other case in which he deems it expedient, furnish one or more copies of the certificate.

Register of Designs

46. (1) There shall be kept at the Department of Patents, Designs and Trade Marks a book called the Register or Designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may be prescribed.

(2) The register of designs existing at the commencement of this Act shall be incorporated with and form part of the register of designs under this Act.

(3) The register of designs shall be prima facie evidence of any matters by this Act directed or authorized to be entered therein.

Copyright in Registered Designs *Copyright on registration*

47. (1) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during five years from the date of registration.

(2) If before the expiration of the said five years application for the extension of the period of copyright is made to the Registrar in the prescribed manner, the Registrar shall, on payment of the prescribed fee, extend the period of copyright for a second period of five years from the expiration of the original period of five years.

(3) If before the expiration of such second period of five years application for the extension of the period of copyright is made to the Registrar in the prescribed manner, the Registrar may, subject to any rules under this Act, on payment of the prescribed fee, extend the period of copyright for a third period of five years from the expiration of the second period of five years.

Requirements before delivery on sale

48. (1) Before delivery on sale of any articles to which a registered design has been applied, the proprietor shall-

(a) (if exact representations or specimens were not furnished on the application for registration), furnish to the Registrar the prescribed number of exact representations or specimens of the design; and, if he fails to do so, the Registrar may erase his name from the register, and thereupon the copyright in the design shall cease; and

(b) cause each such article to be marked with the prescribed mark, or with the prescribed words or figures, denoting that the design is registered; and, if he fails to do so, the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the

copyright in the design.

(2) Where a representation is made to the Government by or on behalf of any trade or industry that in the interests of the trade or industry it is expedient to dispense with or modify as

regards any class or description of articles any of the requirements of this section as to marking, the Government may, if it thinks fit, by rule under this Act, dispense with or modify such requirements as regards any such class or description of articles to such extent and subject to such conditions as it thinks fit.

Effect of disclosure on copyright

49. The disclosure of a design by the proprietor to any other person, in such circumstances as would make it contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person other than the proprietor of the design, and the acceptance of a first and confidential order for goods bearing a new or original textile design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof if registration thereof is obtained subsequently to the disclosure or acceptance.

Inspection of registered designs

50. (1) During the existence of copyright in a design, or such shorter period not being less than two years from the registration of the design as may be prescribed, the design shall not be open to inspection except by the proprietor or a person authorized in writing by him, or a person authorized by the Registrar or the Court, and furnishing such information as may enable the Registrar to identify the design, and shall not be open to the inspection of any person except in the presence of the Registrar, or of an officer acting under him, and on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof:

Provided that, where registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.

(2) After the expiration of the copyright in a design, or such shorter period as aforesaid, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

(3) Different periods may be prescribed under this section for different classes of goods.

Information as to existence of copyright

51. On the request of any person furnishing such information as may enable the Registrar to identify the design, and on payment of the prescribed fee, the Registrar shall inform such person whether the registration still exists in respect of the design, and, if so, in respect of what classes of goods, and shall state the date of registration, and the name and address of the registered proprietor.

Cancellation of registration

²⁰[51A. (1) Any person interested may present a petition for the cancellation of the registration of a desig-

(a) at any time after the registration of the design, to the High Court Division on any of the following grounds, namely:-

(i) that the design has been previously registered in Bangladesh; or

(ii) that it has been published in Bangladesh prior to the date of registration; or

(iii) that the design is not a new or original design; or

(b) within one year from the date of the registration, to the Registrar on either of the grounds specified in sub-clauses (i) and (ii) of clause (a).

(2) An appeal shall lie from any order of the Registrar under this section to the High Court Division, and the Registrar may at any time refer any such petition to the High Court Division shall decide any petition so referred.

Registration of designs to bind the Government

51B. The provisions of section 21 shall apply to registered designs as if those provisions were re-enacted herein and in terms made applicable to registered designs.]

Industrial and International Exhibitions Provisions as to exhibitions

52. The exhibition of a design, or of any article to which a design is applied, at an industrial or other exhibition to which the provisions of this section have been extended by the Government by notification in the official Gazette, or the publication of a description of the design, during the period of the holding of the exhibition, or the exhibition of the design or the article or the publication of a description of the design by any person elsewhere during or after the period of the holding of the exhibition, without the privity or consent of the proprietor, shall not prevent the design from being registered or invalidate the registration thereof:

Provided that-

(a) the exhibitor exhibiting the design or article, or publishing a description of the design, gives to the Registrar previous notice in the prescribed form; and

(b) the application for registration is made within six months from the date of first exhibiting the design or article or publishing a description of the design.

Legal Proceedings Piracy of registered design

53. (1) During the existence of copyright in any design it shall not be lawful for any person-

(a) for the purpose of sale to apply or cause to be applied to any article in any class of goods in which the design is registered the design or any fraudulent or obvious imitation thereof, except with the license or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or,

(aa) to import for the purposes of sale, without the consent of the registered proprietor,

any article belonging to the class in which the design has been registered, and having applied to it the design or any fraudulent or obvious imitation thereof; or

(b) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article in any class of goods in which the design is registered without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.

(2) If any person acts in contravention of this section, he shall be liable for every contravention-

(a) to pay to the registered proprietor of the design a sum not exceeding five hundred taka recoverable as a contract debt, or

(b) if the proprietor elects to bring suit for the recovery of damages for any such contravention, and for an injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly:

Provided that the total sum recoverable in respect of any one design under clause (a) shall not exceed one thousand taka.

(3) When the Court makes a decree in a suit under sub-section (2), it shall send a copy of the decree to the Registrar, who shall cause an entry thereof to be made in the register of designs.

Application of certain provisions of the Act as to Patents and Designs

54. The provisions of this Act with regard to certificates of the validity of a patent and to the remedy in case of groundless threats of legal proceedings by a patentee shall apply in the case of registered designs in like manner as they apply in the case of patents, with the substitution of references to the copyright in a design for references to a patent, and of references to the proprietor or a design for references to the patentee, and of references to the design for references to the invention.

PART III

GENERAL

Registration of Designs

Department of Patents, Designs and Trade Marks and Proceedings

thereat Appointments of state Registrar, etc

²¹[55. (1) The Government may, by notification in the Official Gazette, appoint a person, for the purposes of this Act and Trade Marks Act, 1940 (Act No. V of 1940), to be known as Registrar of Patents, Designs and Trade Marks.

(2) For the purposes of this Act and Trade Marks Act, 1940 (V of 1940), there shall be established a department called the Department of Patents, Designs and Trade Marks.

(3) The Department of Patents, Designs and Trade Marks shall consist of two wings,

namely:-

(a) The Patents and Designs Wing to deal with matters related to the Patents And Designs Act; and

(b) The Trade Marks Registry Wing to deal with matters related to the Trade Marks Act.

(4) The Head Office of the Department of Patents, Designs and Trade Marks shall be in Dhaka; and there may be established branch office or offices at such other place or places as the Government may determine.

(5) There shall be a common seal of the Department of Patents, Designs and Trade Marks as well as separate seals to indicate the separate entities of the Patents and Designs Wing and the Trade Marks Registry Wing.

(6) The Government may, in addition to the Registrar, appoint such other officers and employees in the Department of Patents, Designs and Trade Marks, as it may think necessary.

(7) The Registrar may, subject to the approval of the Government, delegate such office functions of him to any other officer or officers of the Department of Patents, Designs and Trade Marks, as may be deemed necessary.]

[Omitted]

56. [Omitted by section 5 of the Patents and Designs (Amendment) Act, 2003 (Act No. XV of 2003).]

Fees Fees

57. (1) There shall be paid in respect of the grant of patents and the registration of designs, and applications thereof, and in respect of other matters with relation to the patents and designs under this Act, such fees as may be prescribed by the Government, so however that the fees prescribed in respect of the instruments and matters mentioned in the schedule shall not exceed those there specified.

(2) A proceeding in respect of which a fee is payable under this Act or the rules made thereunder shall be of no effect unless the fee has been paid.

Provisions as to Registers and other Documents in the Department of Patents, Designs and Trade Marks Notice of trust not to be entered in registers

58. There shall not be entered in any register kept under this Act, or be receivable by the Registrar, any notice of any trust, expressed, implied or constructive.

Inspection of and extracts from registers

59. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to the provisions of this Act; and certified copies, sealed with the seal of the Department of Patents, Designs and Trade Marks, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

Information relating to patents

²²[59A. A person making a request to the Registrar in the prescribed manner as respects any patent specified in the request or as respects any application for a patent so specified, for information to be furnished to him by the Registrar of any such matters as may be prescribed affecting that patent or application, shall be entitled, subject to the payment of the prescribed fee, to have information supplied to him accordingly.]

Privilege of reports of Registrar

60. Reports of or to the Registrar made under this Act shall not in any case be published or be open to public inspection.

Prohibition of publication of specification, drawings, etc, where application abandoned, etc

61. (1) Where an application for a patent has been abandoned or deemed to have been refused, the specifications and drawings (if any), accompanying or left in connection with such application, shall not, save as otherwise expressly provided by this Act, at any time be open to public inspection or be published by the Registrar.

(2) Where an application for a design has been abandoned or refused, the application and any drawings, photographs, tracings, representations or specimens left in connection with the application shall not at any time be open to public inspection or be published by the Registrar.

Power for Registrar to correct clerical errors

62. The Registrar may, on request in writing accompanied by the prescribed fee,-

(a) correct any clerical error in or in connection with an application for a patent or in any patent or any specification;

(b) [Repealed by the Indian Patents and Designs (Amendment) Act, 1930 (Act No. VII of 1930).]

(c) correct any clerical error in the representation of a design or in the name or address of the proprietor of any patent or design, or in any other matter which is entered upon the register of patents or the register of designs.

Entry of assignments and transmissions in registers

63. (1) Where a person becomes entitled by assignment, transmission or other operation of law to a patent or to the copyright in a registered design, he may make application to the Registrar to register his title, and the Registrar shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of such patent or design, and shall cause an entry to be made in the prescribed manner in the register of the assignment, transmission or other instrument affecting the title.

(2) Where any person becomes entitled as mortgagee, licensee or otherwise to any interest in a patent or registered design, he may make application to the Registrar to register his title, and the Registrar shall, on receipt of such application and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the register of patents or designs, as the case may be, with particulars of the instrument, if any, creating such interest.

(3) The person registered as the proprietor of a patent or design shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise dealt with, the patent or design and to give effectual receipts for any consideration for any such assignment, license or dealing:

Provided that any equities in respect of the patent or design may be enforced in like manner as in respect of any other moveable property.

(4) Except in the case of an application made under section 64, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of sub-sections (1) and (2) shall not be admitted in evidence in any Court in proof of the title to a patent or to copyright in a design or to any interest therein, unless the Court, for reasons to be recorded in writing, otherwise directs.

Rectification of register

64. (1) The Registrar may, on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of patents or designs of any entry, or by any entry made in either such register without sufficient cause, or by any entry wrongly remaining on either such register, or by an error or defect in any entry in either such register, make such order for making, expunging or varying such entry as he thinks fit and rectify the register accordingly.

(2) The Registrar may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of a register.

(3) An appeal shall lie to the High Court Division from any order of the Registrar under this section; and the Registrar may refer any application under this section to the High Court Division for decision, and the High Court Division shall dispose of any application so referred.

(4) Any order of the Court rectifying a register shall direct that notice of the rectification be served on the Registrar in the prescribed manner, who shall upon the receipt of such notice rectify the register accordingly.

(5) Nothing in this section shall be deemed to empower the Registrar-

(a) to rectify the register of patents, or to decide any question relating to a patent, otherwise than for the purpose of correcting a mistake of fact apparent from a reference either to the patent itself or to some order of a competent authority made under any other provision of this Act, or

(b) to make any such order cancelling the registration of a design as is provided for in section 51A.

Powers and Duties of Registrar Power of Registrar in proceedings under Act

65. Subject to any rules in this behalf, the Registrar in any proceedings before him under this Act shall have the powers of a Civil Court for the purpose of receiving evidence

administering oaths enforcing the attendance of witnesses compelling the discovery and production of documents, issuing commissions, for the examining of witnesses and awarding costs and such award shall be executable in any Court having jurisdiction as if it were a decree of that Court.

Publication of patented inventions

66. The Registrar shall issue periodically a publication of patented inventions containing such information as the Government may direct.

Exercise of discretionary power by Registrar

67. Where any discretionary power is by or under this Act given to the Registrar, he shall not exercise the power adversely to the applicant for a patent, or for amendment of an application or of a specification, or for registration of a design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard.

Power of Registrar to take directions of the Government

68. The Registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to the Government for directions in the matter.

Refusal to grant patent, etc, in certain cases

69. (1) The Registrar may refuse to grant a patent for an invention or to register a design of which the use would, in his opinion, be contrary to law or morality.

(2) An appeal shall lie to the Government from an order of the Registrar under this section.

Appeals to the Government

70. (1) Where an appeal is declared by this Act to lie from the Registrar to the Government, the appeal shall be made within three months of the date of the order passed by the Registrar, and shall be in writing, and accompanied by the prescribed fee.

(2) In calculating the said period of three months the time (if any) occupied in granting a copy of the order appealed against shall be excluded.

(3) The Government may, if it thinks fit, obtain the assistance of an expert in deciding such appeals, and the decision of the Government shall be final.

Evidence, etc, Evidence before the Registrar

²³[70A. Subject to any rules made under section 77, in any proceeding under this Act before the Registrar, the evidence shall be given by affidavit, in the absence of directions by the Registrar to the contrary; but in any case in which the Registrar thinks it right so to do he may take evidence viva voce in lieu of or in addition to evidence by affidavit or may allow any party to be cross-examined on the contents of his affidavit.]

Certificate of Registrar to be evidence

71. A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing which he is authorised by this Act, or any rules made thereunder, to make or do, shall be prima facie evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Evidence of documents in Department of Patents, Designs and Trade Marks

²⁴[71A. Printed or written copies or extracts, purporting to be certified by the Registrar and sealed with the seal of the Department of Patents, Designs and Trade Marks of or

from patents, specifications and other documents in the Department of Patents, Designs and Trade Marks, and of or from registers and other books kept there, shall be admitted in evidence in all Courts in Bangladesh, and in all proceedings, without further proof or production of the originals:

Provided that a Court may, if it has reason to doubt the accuracy or authenticity of the copies tendered in evidence, require the production of the originals or such further proof as it considers necessary.]

Transmission of copies of specifications, etc, and inspection thereof

72. Copies of all such specifications, drawings and amendments left at the Department of Patents, Designs and Trade Marks, as become open to public inspection under the provisions of this Act, shall be transmitted, as soon as may be, after the printed copies thereof are available, to such authorities as the Government may appoint in this behalf, and shall be open to the inspection of any person at all reasonable times at places to be appointed by those authorities and approved by the Government.

Applications and notices by post

73. Any application, notice or other document authorized or required to be left, made or give at the Department of Patents, Designs and Trade Marks or to the Registrar, or to any other person under this Act, may be sent by post.

Declaration by infant, lunatic, etc

74. (1) If any person is, by reason of infancy, lunacy or other disability, incapable of making any statement or doing anything required or permitted by or under this Act, the lawful guardian, committee or manager (if any) of the person subject to the disability, or if there be none, any person appointed by any Court possessing jurisdiction in respect of his property, may make such statement or a statement as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the person subject to the disability.

(2) An appointment may be made by the Court for the purposes of this section upon the petition of any person acting on behalf of the person subject to the disability or of any other person interested in the making of the statement or the doing of the thing.

Security for costs

²⁵[74A. Where a person giving notice of any opposition under this Act or giving notice to the Court of appeal from any decision of the Registrar under this Act, neither resides nor carries on business in Bangladesh, the Registrar or the Court, as the case may be, may require such person to give security for the payment of all costs incurred and likely to be incurred in the proceedings or appeal, as the case may be, and, in default of such security being given, may disallow the opposition or dismiss the appeal.]

Agency Subscription and verification of certain documents

75. The following documents, namely,-

- (1) applications for a patent,
- (2) notices of opposition,
- (3) applications for extension of term of a patent,

- (4) applications for the restoration of lapsed patents,
- (5) applications for leave to amend,
- (6) applications for compulsory license or revocation, and
- (7) notices of surrenders of patent,

shall be signed and verified, in the manner prescribed, by the person making such applications or giving such notices:

Provided that, if such person is absent from Bangladesh they may be signed and verified on his behalf by an agent resident in Bangladesh authorized by him in writing in that behalf.

Agency

76. (1) All other applications and communications to the Registrar under this Act may be signed by, and all attendances upon the Registrar may be made by or through a legal practitioner or by or through an agent authorised to the satisfaction of the Registrar.

(2) The Registrar may, if he sees fit, require-

- (a) any such agent to be resident in Bangladesh;
- (b) any person not residing in Bangladesh to employ an agent residing in Bangladesh;
- (c) the personal signature or presence of any applicant, opponent or other person.

Powers, etc. of Government Power for Government to make rules

77. (1) The Government may make such rules as it thinks expedient subject to the provisions of this Act-

- (a) for regulating the practice of registration under this Act;
- (b) for classifying goods for the purposes of designs;
- (c) for making or requiring duplicates of specifications, drawings and other documents;
- (d) for securing and regulating the publishing and selling of copies, at such prices and in such manner as the Government thinks fit, of specifications, drawings and other documents;
- (e) for securing and regulating the making, printing, publishing, and selling of indexes to, and abridgements of, specifications and other documents in the Department of Patents, Designs and Trade Marks; and providing for the inspection of indexes and abridgements and other documents;

²⁶[(ee) for the manner in which fees leviable under this Act may be paid;

(eee) for ensuring secrecy with respect to patents to which section 21A applies;]

(f) generally for regulating the business of the Department of Patents, Designs and Trade Marks, the conduct of proceedings before the Registrar, and all things by this Act placed under the direction or control of the Registra] or of the Government; and

(g) generally for the purpose of carrying into effect the provisions of this Act.

(2) The power to make rules under this section shall be subject to the condition of the rules being made after previous publication.

²⁷[(2A) Nothing in sub-section (2) shall apply in the case of rules made for the purpose specified in clause (eee) of sub-section (1); and any such rules may modify any of the provisions of this Act so far as may be necessary for that purpose.]

(3) All rules made under this section shall be published in the official Gazette, and on such publication shall have effect as if enacted in this Act.

Offences Wrongful use of words Department of Patents, Designs and Trade Marks
78. If any person uses on this place of business, or on any document issued by him, or otherwise, the words Department of Patents, Designs and Trade Marks or any other words suggesting that his place of business is officially connected with, or is, the Department of Patents, Designs and Trade Marks, he shall be punishable with fine which may extend to two hundred taka, and, in the case of a continuing offence, with further fine of twenty taka for each day on which the offence is continued after conviction therefore.

[Reciprocal arrangements with the United Kingdom and other parts of His Majesty's dominions. Reciprocal arrangements with the United Kingdom and other parts of His Majesty's dominions

78A. (1) Whereas His Majesty has by Order made on the 28th day of July, 1938, declared British India to be a convention country within the meaning of section 91A of the Patents And Designs Acts, 1907 to 1938, any person who has applied for protection for any invention or design in the United Kingdom, or his legal representative or assignee shall, either alone or jointly with any other person be entitled to claim that the patent that may be granted to him under this Act, for the said invention or the registration of the said design under this Act, shall be in priority to other applicants and shall have the same date as the date of the application in the United Kingdom:

Provided that-

(a) the application is made in the case of a patent within twelve months, and, in the case of design, within six months from the application for protection in the United Kingdom: and

(b) nothing in this section shall entitle the patentee or the proprietor of the design to

recover damages for

infringements happening prior to the actual date on which, in the case of a patent, his application is accepted, or, in the case of a design, the design is registered, in Bangladesh.

(2) The patent granted for an invention or the registration of a design shall not be invalidated-

(a) in the case of a patent, by reason only of the publication of a description of, or use of, the invention, or

(b) in the case of a design, by reason only of the exhibition or use of, or the publication of a description or representation of, the design,

in Bangladesh during the period specified in this section as that within which the application may be made.

(3) The application for the grant of a patent or the registration of a design under this section must be made in the same manner as an ordinary application under this Act:

Provided that, in the case of a patent,-

(a) the application shall be accompanied by a complete specification; and

(b) if the application is not accepted within eighteen months from the date of the application for protection in the United Kingdom, the specification shall with the drawings (if any) supplied therewith, be open to public inspection at the expiration of that period.

(4) Where it is made to appear to the Government that the legislature of any other part of His Majesty's dominions ²⁸[* * *] has made satisfactory provision for the protection of inventions or designs, patented or registered in Bangladesh the Government may, by notification in the official Gazette, direct that the provisions of this section with such variations or additions, if any, as may be set out in such notification, shall apply for the protection of inventions or designs patented or registered in that part of His Majesty's dominions ²⁹[* * *].]

Savings and Repeal Savings for prerogative

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

[Repealed]

80. [Repealed by section 2 and Schedule of the Repealing Act, 1927 (Act No. XII of 1927).]

[Repealed]

81. [Repealed by section 3 and Schedule II of the Repealing and Amending Act, 1920 (Act No. XXXI of 1920).]

¹ Throughout this Act, except otherwise provided, the words “Bangladesh”, “Government”, “the High Court Division” and “Taka” were substituted, for the words “Pakistan”, “Central Government” or “Central Government or Provincial Government”, “a High Court” or “the High Court” and “rupees” or “Rs.” respectively by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973)

² Clause (1) was substituted, for former clause (1) by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973)

³ Clause (3) was omitted by section 3 of the Patents And Designs (Amendment) Act, 2003 (Act No. XV of 2003).

⁴ The words “Penal Code” were substituted, for the words “Pakistan Penal Code” by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).

⁵ Clause (15) was added by section 3 of the Patents And Designs (Amendment) Act, 2003 (Act No. XV of 2003)

⁶ Sections 4A and 4B were inserted by section 4 of the Indian Patents And Designs (Amendment) Act, 1945 (Act No. IX of 1945)

⁷ Clause (dd) was inserted by section 5 of the Indian Patents And Designs (Amendment) Act, 1945 (Act No. IX of 1945).

⁸ The words ‘any other law for the time being in force’ were substituted, for the words and figure ‘rule 53 of the Defence of Pakistan Rules’ by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973)

⁹ Section 13A was inserted by section 10 of the Indian Patents And Designs (Amendment) Act, 1945 (Act No. IX of 1945)

¹⁰ Section 15A was inserted by section 11 of the Indian Patents and Design (Amendment) Act, 1930 (Act No. VII of 1930)

¹¹ Sections 21 and 21A were substituted, for the original section 21 by section 15 of the Indian Patents And Designs (Amendment) Act, 1930 (Act No. VII of 1930)

¹² The words “or British Possession” were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973)

¹³ Section 23A was inserted by section 18 of the Indian Patents And Designs (Amendment) Act, 1930 (Act No. VII of 1930)

¹⁴ The words “Attorney General” were substituted, for the words “Advocate General” by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973)

¹⁵ The words “Attorney-General” were substituted, for the words “Advocate General” by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973)

¹⁶ The words “or any other High Court” were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).

¹⁷ Sub-section (2) was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).

¹⁸ Section 35A was inserted by section 21 of the Indian Patents And Designs (Amendment) Act, 1930 (Act No. VII of 1930)

¹⁹ Section 38A was inserted by section 12 of the Indian Patents And Designs (Amendment) Act, 1945 (Act No. IX of 1945)

²⁰ Sections 51A and 51B were inserted by section 24 of the Indian Patents And Designs (Amendment) Act, 1930 (Act No. VII of 1930)

²¹ Section 55 was substituted, for section 55 by section 4 of the Patents And Designs (Amendment) Act, 2003 (Act No. XV of 2003)

²² Section 59A was inserted by section 14 of the Indian Patents And Designs (Amendment) Act, 1939 (Act No. XII of 1939)

²³ Section 70A was inserted by section 16 of the Indian Patents And Designs (Amendment) Act, 1939 (Act No. XII of 1939)

²⁴ Section 71A was inserted by section 16 of the Indian Patents And Designs (Amendment) Act, 1939 (Act No. XII of 1939)

²⁵ Section 74A was inserted by section 30 of the Indian Patents And Designs (Amendment) Act, 1930 (Act No. VII of 1930)

²⁶ Clauses (ee) and (eee) were inserted by section 31 of the Indian Patents And Designs (Amendment) Act, 1930 (Act No. VII of 1930).

²⁷ Sub-section (2A) was inserted by section 31 of the Indian Patents And Designs (Amendment) Act, 1930 (Act No. VII of 1930).

²⁸ The words ‘or of any Acceding State or non-Acceding State’ were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).

²⁹ The words and comma ‘or in that State, as the case may be’ were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).