
LAWS OF SAINT VINCENT AND THE GRENADINES
REVISED EDITION

PATENTS ACT

CHAPTER 314

**Act No.
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CHAPTER 314

PATENTS ACT

An Act to repeal and replace the Patents Act (Chapter 110 of the Revised Laws 1990 Edition) and the Registration of United Kingdom Patents Act (Chapter 112 of the Revised Laws 1990 Edition), to revise the law relating to patents in order to give effect to certain international conventions on patents, and for related matters.

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows.

[Act No. 39 of 2004.]

[Date of commencement: *4th August*, 2008.]

PART I

Preliminary

1. Short title and commencement

This Act may be cited as the Patents Act, 2004, and shall come into operation on a date to be fixed by the Governor-General by Proclamation published in the *Gazette*.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Caribbean Community**” means the community established under Article 2 of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy (2001);

“**CIPO**” means the Commerce and Intellectual Property Office;

“**Court**” means the High Court;

“**date of filing**” means, in relation to—

- (a) an application for a patent under this Act, the filing date accorded that application under section 32;
- (b) an application for a patent under this Act which is submitted with a claim under section 33 for priority of one or more earlier applications filed in a country that is party to the Paris Convention, the date accorded that application under section 25, having regard to section 33; and
- (c) an international application filed in accordance with the Patent Co-operation Treaty, the date accorded the application under the treaty;

“**examiner**” means any person or body appointed or designated as such by the Minister under section 6;

“**exclusive licence**” means a licence from the proprietor of or applicant for a patent which confers on the licensee, or on the licensee and persons authorised by him, to the exclusion of all other persons including the proprietor or the applicant, any right in respect of the invention to which the patent or application relates and “exclusive licensee” shall be construed accordingly;

“**formal requirements**” means those requirements designated as such by rules made for the purposes of section 37;

“**former Acts**” means the Patents Act and the Registration of United Kingdom Patents Act;

[Chapter 110 and Chapter 112 of the Revised Laws 1990 Edition.]

“**international application**” means an application made under the Patent Co-operation Treaty;

“**International Bureau**” means the Secretariat of the World Intellectual Property Organisation established by the convention signed at Stockholm on the 14th day of July, 1967;

“**invention**” means an idea of an inventor which permits in practice the solution to a specific problem in the field of technology;

“**inventor**” means the person who devises an invention and “joint inventors” shall be construed accordingly;

“**Minister**” means the Minister responsible for legal affairs;

“**Official Journal**” means a publication issued by or at the direction of the Commerce and Intellectual Property Office, and includes advertisement in the *Gazette*;

“**Paris Convention**” means the Paris Convention for the Protection of Industrial Property signed in Paris on the 20th day of March, 1883, as amended from time to time and as in force in Saint Vincent and the Grenadines;

“**patent**” means the title granted to protect an invention and unless the context otherwise requires includes, subject to Part XII, a utility certificate;

“**patent application**” means an application under this Act for a patent and unless the context otherwise requires includes, subject to Part XII, a utility certificate application;

“**Patent Co-operation Treaty**” means the treaty of that name signed at Washington on the 19th day of June, 1970;

“**patented invention**” means an invention for which a patent is granted;

“**prescribed**” means, in the case of proceedings before the Court, prescribed by rules of Court, and, in any other case, prescribed by rules made under this Act;

“**priority date**” means the date determined as such under section 33;

“**published**” means made available to the public and a document shall be taken to be published if a reproduction thereof can be inspected as of right by members of the public whether on payment of a fee or not;

“**register**” means the register of patents maintained under section 9;

“**Registrar**” means the Registrar of the Commerce and Intellectual Property Office and any reference to the Registrar shall be construed as including a reference to any officer discharging the functions of the Registrar;

“**right**”, in relation to any patent application or patent, includes an interest in the patent application or patent and, without prejudice to the foregoing, any reference in this Act to a right in a patent includes a reference to a share in the patent;

“**utility certificate**” means a utility certificate under Part XII.

PART II

Administration of Patents

3. Powers and duties of the Registrar

(1) The Registrar shall be responsible for the grant and administration of patents and utility certificates and for the provision of patent information services.

(2) The patent information services referred to in subsection (1) shall consist of the making available in the manner prescribed for use by the public and on payment of prescribed fees, if any, of patent and relevant non-patent literature, including all domestic patent documents and such foreign patent documents as are available.

(3) The Registrar shall have authority to use the seal of CIPO in discharging his duties under this Act and documents bearing the impression of such seal shall be judicially noticed and admissible in evidence.

4. Annual list of patents

The Registrar shall cause to be published in the month of January in each year in the Official Journal a list of all patents granted during the preceding year.

5. Power to issue duplicate patents

If satisfactory evidence that a patent is lost or destroyed is provided to the Registrar he may cause a duplicate of the patent to be sealed.

6. Appointment of examiners

The Minister may appoint or designate examiners, as necessary to perform the functions required by this Act.

7. Restrictions on officers of CIPO

(1) An application for a patent may not be filed by, a patent may not be granted to, and rights relating to patents may not be held by officers or persons employed by CIPO.

(2) An officer of or person employed in CIPO shall not buy, sell or trade in a patent, whether granted in Saint Vincent and the Grenadines or elsewhere.

(3) An officer of or person employed by CIPO shall not, during his period of employment or thereafter, communicate information obtained in the course of employment to a person not entitled to the information or make use of the information for personal gain.

(4) An officer of or person employed by CIPO who contravenes subsection (2) or (3) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months.

8. Exercise of discretionary power by Registrar

Where discretionary power is given to the Registrar by virtue of this Act, he shall not exercise that power adversely to any party in proceedings before him without giving that party an opportunity of being heard in relation to the exercise of that power.

PART III

Register of Patents and Official Records

9. Register of Patents

(1) The Registrar shall keep and cause to be maintained at CIPO a register in which shall be recorded particulars of—

- (a) patents that are in force, including the full name and address of the inventor and the date on which the patent is sealed;
- (b) any assignments, transmissions or other operation of law by which a person becomes entitled to a patent or licence;

- (c) all matters that are required by this Act to be entered in the register;
- (d) any other matter affecting the validity of proprietorship of a patent.

(2) All particulars entered in the registers maintained under the former Acts shall be taken to have been so entered at the commencement of this Act.

(3) A person may, upon payment of the prescribed fee, if any, inspect the register.

(4) The register may be kept in whole or in part by using a computer.

(5) Any record of a particular or other matter made by using a computer for the purpose of keeping the register is taken to be an entry in the register.

10. Power to correct clerical errors

The Registrar may, pursuant to a written request of the applicant or registered proprietor, as the case may be, and upon payment of the prescribed fee, if any—

- (a) correct any clerical error in, or in connection with, an application for a patent;
- (b) correct any clerical error in the name, style or address of the registered proprietor of a patent.

11. Rectification of register

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

12. Evidence of official records

(1) The register shall be *prima facie* evidence of all matters duly entered therein.

(2) A copy of, or an extract from, the register that is certified by the Registrar to be a true record or extract is admissible in any proceedings as if it were the original.

(3) If the register or a part of the register is kept by using a computer, a document certified by the Registrar as reproducing in writing a computer record of all or any of the particulars comprised in the register or in any part of the register shall be admissible in any proceedings as evidence of those particulars.

(4) A certificate signed by the Registrar and stating that—

- (a) any thing required or permitted to be done by this Act or the former Acts were done or not done on, or had been done or not been done by a specified date;
- (b) any thing prohibited by this Act or the former Acts was done or not done on, or had been done or not been done by, a specified date; or
- (c) a document was available for public inspection at CIPPO on a specified date or during a specified period,

shall be *prima facie* evidence of the matters so stated.

PART IV

*Patentability***13. Patentable inventions**

(1) Subject to subsection (2), a patent may be granted only for an invention which satisfies the following conditions—

- (a) the invention is new;
- (b) the invention involves an inventive step; and
- (c) the invention is capable of industrial application,

and references in this Act to a patentable invention shall be construed accordingly.

(2) For the purposes of this Act the following are excluded from patent protection—

- (a) a discovery, scientific theory or mathematical method;
- (b) a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever;
- (c) a scheme, rule or method for performing a mental act, playing a game or doing business;
- (d) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; and
- (e) the presentation of information;
- (f) an invention, the commercial exploitation of which would be contrary to public order or morality;
- (g) an invention which is prejudicial to human, animal or plant life, to health or to the environment; or
- (h) any plant or animal variety or any biological process for the generation of plants or animals, not being a microbiological process or the product of such a process.

(3) For the purposes of subsection (2)(f) the commercial exploitation of an invention shall not be regarded as contrary to public order or morality solely on the ground that it is prohibited by any law in force in Saint Vincent and the Grenadines.

(4) The Minister may by order vary the provisions of subsection (2) for the purpose of maintaining them in conformity with developments in science and technology.

14. Novelty

(1) An invention shall be taken to be new if it does not form part of the state of the art.

(2) The state of the art in the case of an invention shall be taken to comprise everything disclosed about the invention to the public whether in Saint Vincent and the Grenadines or elsewhere, by written or oral disclosure or any other means prior to the date of filing of the application claiming the invention.

(3) For the purposes of subsection (2), the disclosure of matter claimed to constitute an invention shall be disregarded if the disclosure occurred within the twelve months immediately preceding the date of filing the application for the patent and the disclosure was due to, or made in consequence of—

- (a) acts committed by the applicant or his predecessor in title;
- (b) an abuse committed by a third party with regard to the applicant or his predecessor in title.

(4) In the case of an invention consisting of a substance or composition for use in a method of treatment of the human or animal body by surgery or therapy or of diagnosis practised on the human or animal body, the fact that the substance or composition forms part of the state of the art shall not prevent the invention from being taken to be new if the use of the substance or composition in that method does not form part of the state of the art.

15. Inventive step

An invention shall be taken to involve an inventive step if it is not obvious to a person having ordinary skill in the art, having regard to any matter which forms part of the state of the art within the meaning of section 14(2).

16. Industrial application

An invention shall be taken to be capable of industrial application if, according to its nature, it can be made or used in any kind of industry including agriculture, fishery and handicraft.

17. Nature of invention

The subject matter of an invention may be a product or process.

PART V

Patent Rights and Ownership

18. Who may apply for a patent

Any person may make an application for a patent either alone or jointly with another.

19. Right to obtain patent

(1) A patent for an invention may be granted—

- (a) to the inventor or joint inventors; or
- (b) to the successor or successors in the title of any person or persons mentioned in paragraph (a),

and to no other person.

(2) Subject to section 20, a person who makes an application for a patent shall be taken to be the person who is entitled under subsection (1) to be granted a patent and two or more persons who make such an application jointly shall be taken to be the persons so entitled.

(3) Where two or more persons have made the same invention independently of each other, the person whose application has the earliest filing date, or if priority is claimed, the earliest validly claimed priority date, shall have the right to the patent as long as the said application is not withdrawn, abandoned or rejected.

20. Invention made by employee or person commissioned

(1) In the absence of any provision to the contrary in any contract of employment or for the execution of work, the right to a patent for an invention made in the performance of the contract of employment or in the execution of the work shall, notwithstanding section 19, be deemed to accrue to the employer, or the person who commissioned the work, as the case may be.

(2) Where an invention referred to in subsection (1) is made, the inventor shall be entitled to equitable remuneration which may be fixed by the Court in the absence of agreement between the parties.

(3) Where an employee whose contract of employment does not require him to engage in any inventive activity makes, in the field of activities of his employer, an invention using data or means placed at his disposal by his employer, the right to the patent for that invention shall be deemed to accrue to the employer, in the absence of any provision to the contrary in the contract of employment, and the employee shall be entitled to equitable remuneration which, in the absence of agreement between the parties, may be fixed by the Court taking into account the emoluments of the employee, the economic value of the invention and any benefit derived from it by the employer.

(4) For the avoidance of doubt it is hereby declared that when an invention is made by an employee whose contract of employment does not require him to engage in inventive activity, or is made by an employee in a field of activity different to that of his employer and without using information or means put at his disposal by the employer, the right to the patent for the invention shall accrue to the employee.

(5) Any contract of employment to which this section applies that is less beneficial to the employee than the provisions of subsections (2), (3) and (4) is void at the instance of the employee to the extent of the provisions concerning the right to a patent.

(6) This section shall not apply to an invention made before the commencement of this Act.

21. Judicial assignment of patent application or patent

(1) Where the essential elements of the invention claimed in a patent application or patent have been unlawfully derived from an invention for which the right to the patent belongs to another person, that other person may apply to the Court for an order that the patent application or patent be assigned to him.

(2) The Court may make an order as it sees fit upon receipt of an application made under subsection (1).

(3) The Court shall not entertain an application for the assignment of a patent under subsection (1) after the expiry of five years from the date of the grant of the patent, unless it is shown that any person registered as a proprietor of the patent knew at the time of the

grant, that he was not entitled to the patent or in a case of a transferee, knew at the time of the transfer of the patent to him that the transferor was not entitled to the patent.

22. Mention of inventor

(1) The inventor of an invention shall have a right to be mentioned as inventor in any patent granted for the invention, unless a written declaration of the inventor addressed to the Registrar indicates a wish not to be so mentioned.

(2) Any promise or undertaking by the inventor of an invention made to any person to the effect that a declaration under subsection (1) will be made shall be void.

23. Nature of and transactions in patents

(1) A patent or application for a patent is personal property (without being a thing in action), and any patent or any application for a patent and rights in or under it may be transferred, created or granted in accordance with subsections (2) to (6).

(2) Subject to section 24(3), a patent or an application for a patent, or any right in it, may be assigned or mortgaged.

(3) A patent or an application for a patent or right shall vest by operation of law in the same way as any other personal property and may be vested by an assent of personal representatives.

(4) Subject to section 24(3), a licence may be granted under a patent or an application for a patent for working the invention which is the subject of the patent or the application, and—

- (a) to the extent that the licence so provides, a sub-licence may be granted under the licence and any such licence or sub-licence may be assigned or mortgaged; and
- (b) any such licence or sublicence shall vest by operation of law in the same way as any other personal property and may be vested by an assent of personal representatives.

(5) A transaction which is—

- (a) an assignment or mortgage of a patent (or an application for a patent, or a right in a patent or an application;
- (b) an assent relating to a patent or an application for a patent or right therein,

shall be void unless it is in writing and is signed by or on behalf of the parties to the transaction, in the case of an assent or other transaction by a personal representative, by or on behalf of the personal representative, or in the case of a body corporate is so signed or is under the seal of that body.

(6) An assignment of a patent or an application for a patent or a share in it, and an exclusive licence granted under a patent or an application, may confer on the assignee or licensee the right of the assignor or licensor to bring proceedings under section 53 for a previous infringement.

24. Co-ownership of patents and applications for patents

(1) Where a patent is granted to two or more persons jointly, each of them shall, subject to any agreement to the contrary, be entitled to an equal undivided share in the patent.

(2) Subject to the provisions of this section, where two or more persons are proprietors of a patent, then, subject to any agreement for the time being in force, each of those persons shall not be separately entitled, by himself or his agents, in respect of the invention concerned, for his own benefit and without accounting to the other or others to—

- (a) exploit or dispose of the patented invention;
- (b) grant a licence, assign or mortgage the whole or any part of his interest in the patent; or
- (c) take any step or institute any proceedings relating to the patent:

Provided that he may without recourse to any other joint proprietor of a patent, pay any annual fee which is payable.

(3) Subject to the provisions of this section, where two or more persons are proprietors of a patent, anyone else may supply one of those persons with the means, relating to an essential element of the invention, for putting the invention into effect, and the supply of those means by virtue of this subsection shall not amount to an infringement of the patent.

(4) Where a patented invention is disposed of by any of two or more proprietors to any person, that person and any other person claiming through him shall be entitled to deal with the invention in the same way as if it had been disposed of by a sole registered proprietor.

(5) Nothing in subsection (1) or (2) shall affect the mutual rights or obligations of trustees or of the personal representatives of a deceased person, or their rights or obligations as trustees or personal representatives.

(6) Subsections (1) to (5) shall have effect in relation to an application for a patent which is filed as they have effect in relation to a patent and—

- (a) references to a patent and a patent being granted shall accordingly include references respectively to an such application and to the application being filed; and
- (b) the reference in subsection (4) to a patented invention shall be construed accordingly.

25. Rights of owner of patent

(1) Subject to the provisions of this section and sections 26 to 29, the owner of a patent shall have the following exclusive rights in relation to the patent—

- (a) to exploit the patented invention;
- (b) to assign or transmit the patent;
- (c) to conclude licence contracts.

(2) The owner of the patent shall have the right, subject to sections 28, 49, 51 and 61 to take action against any person exploiting the patented invention in Saint Vincent and the Grenadines without his agreement.

(3) For the purposes of this Part, “to exploit” or “exploiting” a patented invention includes any of the following acts in relation to the patent—

- (a) when the patent has been granted in respect of a product—
 - (i) making, importing, offering for sale, selling or using the product,
 - (ii) stocking such product for the purposes of offering for sale, selling or using;
- (b) when the patent has been granted in respect of a process—
 - (i) using the process,
 - (ii) doing any of the acts referred to in paragraph (a), in respect of a product obtained directly by means of the process.

26. Prevention of indirect use of invention

(1) A patent shall confer on its proprietor while in force the right to prevent all persons not having his consent from supplying or offering to supply a person in Saint Vincent and the Grenadines, other than a person entitled to engage in commercial working of the patented invention, with means relating to an essential element of that invention, for putting it into effect therein, provided that that person knows, or in the circumstances ought to have known that those means are intended to put that invention into effect.

(2) Subsection (1) shall not apply when the means referred to therein are staple commercial products, except when the person induces the person supplied to commit acts which the proprietor of the patent is entitled to prevent by virtue of section 25.

27. Limitation of effect of patent

- (1) The rights conferred by a patent shall not extend to—
- (a) acts done privately and for non-commercial purposes;
 - (b) acts done for experimental purposes relating to the subject matter of the relevant patented invention;
 - (c) the extemporaneous preparation for individual cases in a pharmacy of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared; and
 - (d) the use of articles on aircraft, land vehicles or vessels of other countries which temporarily or accidentally enter the airspace, the territory or territorial waters of Saint Vincent and the Grenadines.

(2) Persons performing acts referred to in subsection (1) shall not be considered to be persons entitled to engage in commercial working of the invention for the purposes of section 26(1).

28. Regional exhaustion of rights

The rights conferred by a patent shall not extend to acts in respect of articles which have been put on the market in the Caribbean Community by the owner of the patent or with his consent.

29. Extent of protection

The extent of the protection conferred by a patent shall be determined by the terms of the claim, and, the description and drawings relating thereto shall be used to interpret the claims.

PART VI*Making, Examination and Determination of Applications for Patents***30. Making of application**

(1) An application for a patent shall be filed with the Registrar in the prescribed form and accompanied by the prescribed fee.

(2) An application for a patent shall contain—

- (a) a request for the grant of a patent;
- (b) a description of the invention;
- (c) one or more claims;
- (d) one or more drawings where required;
- (e) an abstract; and
- (f) where the applicant is not the sole inventor or the applicants are not the joint inventors, a statement justifying his or their right to be granted the patent.

(3) The request shall contain—

- (a) a petition that the patent be granted;
- (b) the name of and other prescribed information relating to the applicant, the inventor, and agent, if any;
- (c) the title of the invention; and
- (d) an address within Saint Vincent and the Grenadines for service where the applicant's ordinary residence or principal place of business is not in Saint Vincent and the Grenadines.

(4) The description shall disclose the invention in a manner which is sufficiently clear and complete for the invention to be performed by a person skilled in the art and shall indicate at least one mode known to the applicant for performing the invention.

(5) The claim or claims shall—

- (a) define the matter for which the applicant seeks protection;
- (b) be clear and concise; and
- (c) be supported by the description.

(6) The purpose of the abstract is to give technical information and upon publication it shall not form part of the state of the art by virtue of section 14(2), and the Registrar may determine whether the abstract adequately fulfils its purpose and, if it does not, may reframe it so that it does.

(7) An application for a patent shall relate to one invention only or to a group of inventions so linked so as to form a single general inventive concept.

31. Divisional applications

(1) The applicant may, at any time before a patent is granted, divide the application into two or more applications (referred to in this section as “divisional applications”), provided that each divisional application shall not include any matter which was not disclosed in the initial application as filed.

(2) Each divisional application shall be accorded the filing date, and where applicable, the priority date, of the initial application which it replaces and separate fees shall be paid for each divisional application.

(3) The fact that a patent has been granted on an application that did not comply with the requirement of unity of invention under section 30(7) shall not be a ground for the invalidation of the patent.

32. Filing date of application

(1) The date of filing an application for a patent shall, subject to the provisions of this Act, be the earliest date on which the following conditions are satisfied in relation to the application—

- (a) the documents filed contain an express or implied indication that a patent is sought in pursuance of the application;
- (b) the documents filed identify the applicant or applicants;
- (c) the documents filed contain a description of the invention for which a patent is sought whether or not the description complies with the other provisions of this Act and any relevant rules.

(2) If the Registrar finds that the application does not comply with subsection (1), he shall invite the applicant to file the required correction and shall accord as the filing date the date of receipt of the required correction, but if no correction is made, the application shall be treated as if it had not been filed.

(3) Where the application refers to drawings which in fact are not included in the application, the Registrar shall invite the applicant to furnish the missing drawings, and—

- (a) if the applicant complies, the Registrar shall accord as the filing date the date of receipt of the missing drawings; or
- (b) if the applicant does not comply the Registrar shall accord as the filing date the date of receipt of the application and shall treat any reference to the said drawings as non-existent.

33. Priority date

(1) For the purposes of this Act the priority date of an invention to which an application for a patent relates and also of any matter (whether or not the same as the invention) contained in any such application is, except as provided by the provisions of this Act, the date of filing the application.

(2) A patent application may contain a declaration claiming priority of one or more earlier applications filed by the applicant or his predecessor in title in a country that is a party to the Paris Convention.

(3) Where the application contains a declaration under subsection (2), the Registrar may require that the applicant furnish within the prescribed time a copy of the earlier application certified as correct by the office with which it was filed, or where the earlier application is an international application filed under the Patent Co-operation Treaty, by the office with which the international application was filed.

(4) If in or in connection with an application for a patent a declaration is made, whether by the applicant or any predecessor in title of his, complying with the relevant requirements of rules and specifying one or more earlier relevant applications for the purposes of this section made by the applicant or a predecessor in title of his and each having a date of filing during the period of twelve months immediately preceding the date of filing the application in suit, then—

- (a) if an invention to which the application relates is supported by matter disclosed in the earlier relevant application or applications, the priority date of that invention shall instead of being the date of filing the application, be the date of filing the relevant application in which that matter was disclosed or, if it was disclosed in more than one relevant application, the earliest of them; and
- (b) the priority date of any matter contained in the application in suit which was also disclosed in the earlier relevant application or applications shall be the date of filing the relevant application in which that matter was disclosed or, if it was disclosed in more than one relevant application, the earliest of them.

(5) Where the earlier application is not in English, the Registrar may require a translation thereof in English verified by the translator that the translation is, to the best of his knowledge, complete and faithful.

(6) Where any of the requirements of this section or any rules relating thereto have not been complied with, the declaration referred to in subsection (2) shall be deemed to be invalid.

34. Information on corresponding foreign applications

(1) The applicant shall, at the request of the Registrar, furnish the Registrar with the date and number of any other application for a patent or other title of protection made in an industrial or intellectual property office of any other country, or within a regional industrial or intellectual property office, (in this section referred to as “the foreign application”) relating to the same or essentially the same invention as that claimed in the application filed with the Registrar.

(2) The applicant shall upon the request of the Registrar furnish the Registrar with the following documents relating to any of the foreign applications referred to in subsection (1)—

- (a) a copy of any communication received by the applicant concerning the result of any search or examination carried out in respect of the foreign application;
- (b) a copy of the patent or other title of protection granted on the basis of the foreign application;
- (c) a copy of any final decision rejecting the foreign application or refusing the grant requested in the foreign application;
- (d) a copy of any final decision invalidating the patent or other title of protection granted on the basis of the foreign application referred to in subsection (2).

(3) Documents furnished pursuant to this section—

- (a) shall, if not in English, be accompanied by a translation thereof in English, verified by the translator that the translation is to the best of his knowledge complete and faithful; and
- (b) may be used only for facilitating the evaluation of the novelty and inventive step of the invention for which the patent application is made.

(4) The applicant for a patent may submit comments on any documents furnished by him under subsections (1) and (2).

35. Disclosure of matter between earlier and later applications

It is hereby declared for the avoidance of doubt that where an application (the application in suit) is made for a patent and a declaration is made in accordance with section 33(2) in or in connection with that application specifying an earlier relevant application, the application in suit and any patent granted in pursuance of it shall not be invalidated by reason only of the fact that any subject matter disclosed in the earlier application was made available to the public at any time after the date of filing of the said earlier application.

36. Conversion of patent application

(1) An applicant for a patent may at any time before the grant or refusal of a patent, upon payment of the prescribed fee, convert the application into an application for a utility certificate.

(2) A person may not convert an application under subsection (1) more than once.

37. Examination as to form

(1) Where an application for a patent has a date of filing and is not withdrawn upon the payment by the applicant of the prescribed fee, the Registrar shall conduct a formalities examination.

(2) In the conduct of the formalities examination the Registrar shall determine whether the application complies with the provisions of this Act and rules made thereunder relating to such examination and shall make a report on the application.

(3) If the Registrar determines that all the formal requirements have not been complied with, he shall give the applicant an opportunity to make observations on the report and to amend the application within a specified period so as to comply with those requirements under section 40, and if the applicant fails to do so the Registrar may refuse the application.

(4) If the Registrar refuses the application under subsection (3), he shall inform the applicant in writing of his decision and the reasons for the decision.

38. Substantive examination

(1) Where the Registrar is of the opinion that the application complies with the requirements referred to in section 37 he shall, upon payment by the applicant of the prescribed fee, cause the application to be examined as to whether there has been compliance with the requirements of sections 13 to 17 and 30(4) and (5) and rules relating thereto.

(2) For the purposes of the examination under this Act the Registrar may transmit the application to a duly authorised authority or person with which or with whom an arrangement to that effect has been made and shall provide to that authority or person remuneration as may be agreed upon.

39. Refusal or grant of patent

(1) If the Registrar determines that any of the requirements of this Act or the rules made thereunder are not complied with, he shall inform the applicant of this and shall give him an opportunity within a specified period to make observations on the determination and subject to section 40(2) to amend the application so as to comply with those requirements, and if the applicant fails either to satisfy the Registrar that the said requirements are complied with, or to amend the application so as to comply with them, the Registrar shall refuse the application.

(2) Where two or more patent applications for the same invention, having the same date of filing or the same date of priority, are filed by the same applicant or his successor in title, the Registrar may on that ground refuse to grant a patent in pursuance of more than one of the applications.

(3) If the Registrar refuses under subsection (1) or (2), he shall inform the applicant in writing of his decision and the reasons for his decision.

(4) If the Registrar determines that the application, whether as originally filed or as amended in pursuance of section 37(3), this section or section 40, complies with the requirements of this Act and the relevant rules made thereunder, he shall notify the applicant of that fact and on payment of the prescribed fee within the prescribed period, grant him a patent, and if the said fee is not paid, the application shall be deemed to be withdrawn.

40. Amendment of application before grant

(1) At any time before a patent is granted under this Act, the applicant may, in accordance with the prescribed conditions and subject to subsection (2), amend the application of his own volition.

(2) An amendment of an application shall not be allowed under sections 37(3) and 39(1) or this section if it results in the application disclosing matter extending beyond that disclosed in the application as filed.

(3) The Registrar shall, upon the request of the owner of the patent, make changes in the text of drawings of the patent in order to limit the extent of the protection conferred thereby, provided that the change would not result in the disclosure contained in the patent going beyond the disclosure contained in the initial application on the basis of which the patent was granted.

41. Withdrawal of application

At any time before a patent is granted under this Act, the applicant may, in the prescribed manner, withdraw his application and any such withdrawal may not be revoked.

42. Time limit for determination

The Registrar shall, whenever possible, reach a final decision on the application not later than two years after the commencement of the examination referred to in section 38.

43. Notification and publication of grant of patent

The Registrar shall as soon as practicable after a patent has been granted under section 39(4)—

- (a) publish in the Official Journal a notice of the grant, particulars of the patent and any other information that appears to him to be useful or important;
- (b) after he publishes a notice under paragraph (a) issue a sealed patent in the prescribed form to the applicant therefor.

44. Term of patent

A patent granted under this Act shall take effect on the date on which notice of its grant is published in the Official Journal and, subject to this Act, shall continue in force until the end of the period of twenty years beginning with the date of filing the application for the patent.

PART VII*Maintenance, Surrender and Transmission of Rights and Interests***45. Maintenance fees**

(1) In order to maintain the patent or patent application, an annual maintenance fee shall be paid in advance to the Registrar for each year, starting one year after the date of filing the application for grant of the patent, and where that fee is not paid in accordance with this subsection the patent shall lapse or the application shall be deemed to have been withdrawn.

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

(3) If a patent ceases to have effect under subsection (1), the lapse of the patent shall be entered in the Register and published in the Official Journal.

46. Surrender of patent or claim

(1) The proprietor of a patent may at any time by notice given to the Registrar in the prescribed manner offer to surrender his patent or one or more claims contained in his patent.

(2) Where an offer is made under this section, the Registrar shall advertise the offer in the prescribed manner and any person interested may, within the prescribed period commencing on the date of the publication of the advertisement, give notice to the Registrar of his opposition to the proposed surrender.

(3) Where notice of opposition is duly given under this section the Registrar shall notify the proprietor of the patent and determine the question.

(4) If the Registrar is satisfied that the patent or any claim or claims contained in the patent may properly be surrendered, he may accept the offer and record his acceptance in the register and shall, as soon as practicable, publish notice of his acceptance in the Official Journal.

(5) From the date when notice of acceptance is published under subsection (4), the patent, claim or claims shall cease to have effect, but no action for infringement shall lie in respect of any act done before that date and no right to compensation shall accrue for any use of the patented invention before that date for purposes of the Crown.

(6) Where a patent has been granted to two or more persons, a notice in accordance with subsection (1) shall be signed by each of those persons.

47. Transmission of rights and interests

(1) Any person who claims to have acquired the property in a patent or application for a patent by virtue of any transaction to which this section applies shall be entitled as against any other person who claims to have acquired that property by virtue of an earlier transaction to which this section applies if, at the time of the later transaction—

- (a) the earlier transaction was not registered; or
- (b) in the case of any application, notice of the earlier transaction had not been given to the Registrar; and
- (c) in any case, the person claiming under the later transaction did not know of the earlier transaction.

(2) Subsection (1) shall apply equally to the case where any person claims to have acquired any right in or under a patent or application for a patent by virtue of a transaction to which this section applies, and that right is incompatible with any such right acquired by virtue of an earlier transaction to which this section applies.

(3) This section applies to the following transactions—

- (a) the assignment of a patent or application for a patent or a right in it;

- (b) the mortgage of a patent or application for a patent or the granting of security over it;
- (c) the grant, assignment of a licence or sub-licence, or mortgage of a licence or sublicense, under a patent or application for a patent;
- (d) the death of the proprietor or one of the proprietors of any patent or application for a patent, or of any person having a right in or under a patent or application for a patent and the vesting of any such right in or under a patent or by an assent of the personal representative of application for a patent; and
- (e) any order or directions of a Court or other competent authority—
 - (i) transferring a patent or application or any right in or under it to any person, or
 - (ii) that an application should proceed in the name of any person,

and in either case the event by virtue of which the Court or authority had power to make any such order or give any such directions.

(4) Where an application for the registration of a transaction has been made, but the transaction has not been registered, registration of the application shall, for the purposes of subsection (1)(a), be treated as registration of the transaction.

(5) For purpose of this section, “**transaction**” includes an instrument and an event.

PART VIII

Voluntary and Non-Voluntary Licences

48. Voluntary licences

(1) Subject to section 24, a proprietor of an application for a patent or patent may grant a licence in respect of the relevant invention.

(2) A licence contract—

- (a) shall be in writing;
- (b) shall be recorded in the register on payment of the prescribed fee;
- (c) shall by notice be published in the Official Journal where it is recorded pursuant to paragraph (b);
- (d) shall have no effect against a third party if it is not recorded pursuant to paragraph (b), unless the Court decides otherwise.

(3) In the absence of any provision to the contrary in the terms of a licence contract, a licensee may not extent to another person the authorisation conferred on him by the proprietor in accordance with subsection (1), nor may he assign or mortgage his licence.

(4) In the absence of any provision to the contrary in the terms of a licence contract, the proprietor may continue to enjoy the rights conferred on him by sections 25 and 26.

(5) To the extent that the licence has been granted as an exclusive licence, the proprietor may not grant a licence in respect of the invention to a third person and may not himself do any of the acts referred to in sections 25 and 26.

(6) If before the expiration of the licence contract, any of the following circumstances occur with respect to an application for a patent or patent, which is the subject of that contract—

- (a) the application for the patent is withdrawn or is deemed to be withdrawn;
- (b) the application for the patent is treated as if it had not been filed;
- (c) the grant of a patent is refused; or
- (d) the patent is revoked,

the licensee shall, from the date of the event, be no longer bound to make any payment directly relating to that patent application or patent.

(7) In any of the circumstances referred to in subsection (6), the licensee shall have the right to repayment of the payments already made and directly relating to the patent application or patent in question, provided he has not, or practically has not, benefited, from the licence.

49. Non-voluntary licences

(1) At any time after the expiration of three years from the date of the grant of a patent under this Act or four years from the date of the filing of the application for the patent, whichever is later, any interested person may apply to the Court for the grant of a non-voluntary licence under the patent on any of the following grounds—

- (a) that a market for the patented invention is not being supplied; or
- (b) that a market for the patented invention is not being supplied on reasonable terms in Saint Vincent and the Grenadines.

(2) Subject to subsections (4), (5), (6) and (7), if the Court is satisfied that either of the grounds referred to in subsection (1) is established, the Court may make an order for the grant of the licence in accordance with the application on such terms as the Court thinks fit.

(3) A licence granted under this section—

- (a) is not exclusive;
- (b) shall not be assigned otherwise than in connection with the goodwill of the business in which the patented invention is used; and
- (c) is limited to the supply of the patented invention predominantly in Saint Vincent and the Grenadines.

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

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

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

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

50. Exercise of powers on applications under section 49

The powers of the Court on an application under section 49 shall be exercised with a view to securing that the inventor or other person beneficially entitled to a patent shall receive reasonable remuneration having regard to the economic value of the licence.

51. Use of patented invention for services of the Crown

(1) Where the public interest so requires, or where the Minister decides that the manner of exploitation by the owner of a patent or his licensee is anti-competitive, then subject to subsection (2) the Minister may authorise a Crown agency or any person in writing, to make, use, exercise or vend the patented invention for the services of the Crown subject to the payment of adequate compensation to the owner thereof, taking into account the economic value of the exploitation, and anything done by virtue of this subsection shall not amount to an infringement of the patent.

(2) Before issuing his authorisation under subsection (1), the Minister shall hear the owner of the patent and any other interested party who may wish to be heard.

(3) Subsection (2) does not apply in the case of a national emergency.

(4) The Minister may upon the request of any of the parties, vary the terms of the authorisation.

(5) (a) Upon the request of the owner of the patent, the Minister shall terminate the authorisation if he is satisfied that the circumstances which led to his decision have ceased to exist and are unlikely to recur, or that the Crown agency or person authorised by him has failed to comply with the terms for the authorisation.

(b) Notwithstanding paragraph (a), the Minister shall not terminate the authorisation if he is satisfied that the need for adequate protection of the legitimate interests of the Crown agency or the person authorised by him justifies maintaining the decision.

(6) An authorisation granted to a person other than a Crown agency shall be subject to the conditions prescribed by section 49(3).

(7) (a) Before an authorisation is granted under subsection (1), the Minister must be satisfied that the proposed user has made efforts to obtain a licence from the patentee on reasonable commercial terms and conditions within a reasonable time, but has failed to do so.

(b) Paragraph (a) shall not apply in cases of national emergency or other circumstances of extreme urgency, provided however, that in such cases the owner of the patent shall be notified of the Minister's decision as soon as is reasonably practicable.

(8) A decision of the Minister under subsection (1), (4) or (5) shall be subject to judicial review at the instance of the owner of the patent or any other interested party.

PART IX

Infringement

52. Infringement

Subject to the provisions of sections 27, 28, 29, 49 and 51, the performance of any of the acts referred to in sections 25 and 26 in relation to a patent while it is in force, without the authorisation of the proprietor of the patent, shall constitute an infringement of the patent.

53. Proceedings for infringement

(1) Subject to the provisions of this Part, civil proceedings may be brought in the Court by the proprietor of a patent in respect of an act alleged to infringe the patent and, without prejudice to any other jurisdiction of the Court, in those proceedings a claim may be made—

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

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

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

(4) In considering whether a respondent has discharged the burden imposed upon him by subsection (3), the Court shall take into account the legitimate interests of the respondent in protecting his manufacturing or business secrets.

54. Restrictions on recovery of damages for infringement

(1) In proceedings for infringement of a patent damages shall not be awarded and an order shall not be made for an account of profits, against a respondent who proves that at the date of the infringement he was not aware, and had no reasonable grounds for supposing that the patent existed.

(2) For the purposes of subsection (1) a person shall not be taken to have been aware or have reasonable grounds for supposing that the patent existed by reason only of the application to a product of the word “patent” or “patented”, or any word or words expressing or implying that a patent has been obtained for the product, unless the number of the patent accompanied the word or words in question.

(3) Where an amendment of the description, claims or any drawing contained in an application for a patent has been allowed under any of the provisions of this Act, no damages shall be awarded in proceedings for an infringement of the patent committed before the decision to allow the amendment unless the Court is satisfied that the description, claims or any drawing contained in an application for the patent was framed in good faith and with reasonable skill and knowledge.

55. Relief for infringement of partially valid patent

(1) If the validity of a patent is put in issue in proceedings for infringement of the patent and it is found that the patent is only partially valid, the Court may, subject to subsection (2), grant relief in respect of that part of the patent which is found to be valid and infringed.

(2) Where in any such proceedings it is found that a patent is only partially valid, the Court shall not grant relief by way of damages, costs or expenses, except where the claimant proves that the description for the patent was framed in good faith and with reasonable skill and knowledge and, in that event, the Court may grant relief in respect of that part of the patent which is valid and infringed, subject to the discretion of the Court as to costs or expenses and as to the date from which damages should be reckoned.

(3) As a condition of relief under this section the Court may direct that the description of the patent be amended to its satisfaction upon an application made for that purpose under section 66, and an application may be so made accordingly, whether or not all other issues in the proceedings have been determined.

56. Certificate of contested validity of patent

(1) If in any proceedings before the Court the validity of a patent to any extent is contested and the patent is found by the Court to be wholly or partially valid, the Court may certify the finding and the fact that the validity of the patent was so contested.

(2) Where a certificate is granted under this section, then, if in any subsequent proceedings before the Court for infringement of the patent concerned or for revocation of the patent a final order or judgement is made or given in favour of the party relying on the validity of the patent as found in the earlier proceedings, that party shall, unless the Court otherwise directs, be entitled to his costs or expenses as between barrister-at-law and client (other than the costs of expenses of any appeal in the subsequent proceedings).

57. Proceedings for infringement by exclusive licensee

(1) Subject to the provisions of this section, the holder of an exclusive licence under a patent shall have the same right as the proprietor of the patent to bring proceedings in respect of an infringement of the patent committed after the date of the licence; and references to the proprietor of the patent in this Act relating to infringement shall be construed accordingly.

(2) In awarding damages or granting any other relief in any such proceedings the Court shall take into consideration any loss suffered or likely to be suffered by the exclusive licensee as a result of the infringement, or, as the case may be, the profits derived from the infringement, so far as it constitutes an infringement of the rights of the exclusive licensee.

58. Effect of non-registration on infringement proceedings

Where by virtue of a transaction, to which section 47 applies, a person becomes the proprietor, one of the proprietors or an exclusive licensee of a patent and the patent is subsequently infringed, the Court shall not award him damages or order that he be given an account of the profits in respect of such subsequent infringement occurring before the transaction is registered unless—

- (a) the transaction is registered within the period of six months beginning with its date; or
- (b) the Court is satisfied that it was not practicable to register the transaction before the end of the period and that it was registered as soon as was practicable thereafter.

59. Remedy for groundless threats of infringement proceedings

(1) Where a person (whether or not the proprietor of, or entitled to any right in, a patent) by circulars, advertisements or otherwise threatens another person with proceedings for an infringement of a patent, a person aggrieved by the threats (whether or not he is the person to whom the threats are made) may, subject to subsection (4), bring proceedings in Court against the person making the threat, claiming any relief mentioned in subsection (3).

(2) In any such proceedings the claimant shall, if he proves that the threats were so made and satisfies the Court that he is a person aggrieved by them, be entitled to the relief claimed unless—

- (a) the respondent proves that the acts in respect of which proceedings were threatened constitute or, if done, would constitute an infringement of a patent; and
- (b) the patent alleged to be infringed is not shown by the claimant to be invalid in a relevant respect.

(3) The said relief is—

- (a) a declaration to the effect that the threats are unjustifiable;
- (b) an injunction against the continuance of the threats; and
- (c) damages in respect of any loss which the claimant has sustained by the threats.

(4) Proceedings may not be brought under this section for a threat to bring proceedings for an infringement alleged to consist of making or importing a product for disposal or of using a process.

(5) It is hereby declared that a mere notification of the existence of a patent does not constitute a threat of proceedings within the meaning of this section.

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

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

- (a) that that person has applied in writing to the proprietor for a written acknowledgment to the effect of the declaration claimed, and has furnished him with full particulars in writing of the act in question; and
- (b) that the proprietor has refused or failed within a reasonable time to give any such acknowledgment.

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

61. Right to continue use begun before date of filing or priority

(1) Where a patent is granted for an invention, a person who before the date of filing of the application for a patent or, if priority was claimed, before the date of priority, does in good faith in Saint Vincent and the Grenadines an act which would constitute an infringement of the patent if it were then in force, or makes in good faith effective and serious preparation to do such an act, shall have the rights specified in subsection (2).

(2) The rights referred to in subsection (1) shall be the following—

- (a) to continue to do, or as the case may be, to do that act himself;
- (b) if the act was done or preparations had been made to do it in the course of a business—
 - (i) to assign the right under paragraph (a),
 - (ii) to transmit the right under paragraph (a) to his heirs on his death or, in the case of a body corporate, on its dissolution, to any person who acquires that part of the business in the course of which the act was done or preparations had been made to do it, or
 - (iii) to authorise the act to be done by any partners of his for the time being in that business,

and the doing of that act by virtue of this subsection shall not amount to an infringement of the patent concerned.

(3) The rights specified in subsection (2) shall not include the right to grant a licence to any person to do an act referred to in subsection (1).

(4) Where a product which is the subject of a patent is disposed of by any person to another in exercise of a right conferred by subsection (2), that other and any person claiming through him shall be entitled to deal with the product in the same way as if it had been disposed of by a sole proprietor of the patent.

PART X

*Revocation of Patent***62. Application for revocation of patent**

(1) Subject to the provisions of this section and section 63, any person may apply to the Court for revocation of a patent.

(2) An application for the revocation of a patent on the ground mentioned in section 63(e) may be made only by a person found by the Court pursuant to section 21 to be entitled to be granted that patent or to be granted a patent for the part of the matter covered by the patent, or, in case more than one person is found to be entitled, by all those persons.

(3) An application under this section may be filed even if the patent has lapsed.

63. Grounds for revocation

An application for revocation of a patent may be made only on any of the following grounds—

- (a) the subject matter of the patent is not patentable under Part IV;
- (b) the description of the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;
- (c) the subject matter of the patent extends beyond the content of the patent application as filed or, if the patent was granted on a divisional application, it extends beyond the content of the relevant earlier application as filed;
- (d) the protection conferred by the patent has been extended by an amendment which should not have been allowed;
- (e) the patent was granted to a person who was not entitled thereto under section 19 or 20, as the case may be.

64. Examination of application for revocation

(1) If on an application for revocation of a patent the Court considers that the grounds for revocation mentioned in section 63 prejudice the maintenance of the patent, the Court may by order unconditionally revoke the patent and may require the proprietor of the patent to advertise the revocation subject to terms as to costs, expenses or otherwise, as the Court thinks fit.

(2) If on an application for revocation of a patent the Court considers that the grounds for revocation mentioned in section 63 affect the patent only partially, the Court may make an order for the revocation of the patent unless within a time specified by the Court the relevant description is amended to the satisfaction of the Court.

(3) The proprietor of the patent shall, if required by the Court, furnish to the Court such information as may be required in regard to foreign applications filed for protection of the invention, or documents filed with any other national or regional industrial property office or in connection with any proceedings relating to an application, a patent or other title of protection for the same or essentially the same invention.

PART XI

*Putting Validity in Issue***65. Circumstances in which validity of patent may be put in issue**

(1) Subject to the following provisions of this section, the validity of a patent may be put in issue before the Court only—

- (a) by way of defence in proceedings for infringement under section 53 or 57;
- (b) in proceedings under section 51, 59, 60 or 62.

(2) The validity of a patent may not be put in issue in any other proceedings and, in particular, no proceedings may be instituted (whether under this Act or otherwise) seeking only a declaration as to the validity or invalidity of a patent.

(3) The only grounds on which the validity of a patent may be put in issue (whether in proceedings for revocation under section 63 or otherwise) are the grounds on which the patent may be revoked under that section.

(4) No determination shall be made in any proceedings mentioned in subsection (1) on the validity of a patent which any person puts in issue on the ground specified in section 63(e) unless—

- (a) it has been determined, either in entitlement proceedings commenced by that person or in the proceedings in which the validity of the patent is in issue, that the patent should have been granted to him and not some other person; and
- (b) except it has been so determined in entitlement proceedings, the proceedings in which the validity of the patent is in issue are commenced before the end of the period of two years beginning with the date of the grant of the patent or it is shown that any person registered as a proprietor of the patent knew at the time of the grant or of the transfer of the patent to him that he was not entitled to the patent.

(5) Where the validity of a patent is put in issue by way of defence, the Court shall if it thinks just to do so, give the respondent an opportunity to comply with the condition in subsection (4)(a).

(6) In subsection (4), “**entitlement proceedings**”, in relation to a patent, means proceedings to determine the question whether a patent was granted to a person not entitled to it.

66. Amendment of patent in infringement or revocation proceedings

(1) Subject to subsection (5), in any proceedings before the Court in which the validity of a patent is put in issue the Court may allow the proprietor of the patent to amend the patent in a manner, and subject to terms as to advertising the proposed amendment and as to costs, expenses or otherwise, as the Court thinks fit.

(2) A person may give notice to the Court of his opposition to an amendment proposed by the proprietor of the patent under this section, and if he does so the Court shall notify the proprietor and consider the opposition in deciding whether the amendment or any amendment should be allowed.

(3) An amendment of a patent under this section shall have effect and be deemed always to have had effect from the grant of the patent.

(4) Where an application for an order under this section is made to the Court, the applicant shall notify the Registrar who shall be entitled to appear and be heard and shall appear if so directed by the Court.

(5) An amendment shall not be allowed if it discloses matter which extends beyond that disclosed in the description of the granted patent or extends the scope of the protection conferred by the patent.

PART XII

Utility Certificates

67. Provisions applicable to utility certificates

(1) The provisions of this Act relating to patents or to patent applications shall, unless otherwise provided under this Part, be applicable to utility certificates or to utility certificate applications, as the case may be.

(2) Sections 14, 15, 38, 44, 45(1) and 63(a) shall not apply to utility certificates nor to utility certificate applications.

68. Qualification of invention for utility certificate

(1) A utility certificate may be granted only for an invention which is new and is capable of industrial application.

(2) An invention for which a utility certificate is requested shall not be considered new if it differs from earlier inventions only in minor respects or in details which are immaterial to the function or application of the invention.

69. Term of utility certificate

A utility certificate granted under this Act shall take effect on the date on which notice of its grant is published in the Official Journal and, subject to this Act, shall continue in force until the end of a period of ten years beginning on the date on which the utility certificate application or, where relevant, the patent application was filed and shall not be renewed.

70. Grounds for revocation

An application for revocation of a utility certificate may be made only on the grounds—

- (a) that the subject matter of the utility certificate may not be protected by a utility certificate under Part IV and this Part; and
- (b) mentioned in section 63(b), (c), (d) or (e).

71. Registration of utility certificates

Particulars of utility certificates granted and notice of all matters which are required by or under this Act or rules to be registered, shall be registered in a special part of the register maintained by the Registrar.

PART XIII

*International Applications under the Patent Co-operation Treaty***72. Interpretation**

In this Part—

- (a) “**designated office**”;
- (b) “**elected office**”;
- (c) “**International application**”;
- (d) “**International Bureau**”; and
- (e) “**receiving office**”,

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

73. Filing date of international application

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

(2) Any international application under the Patent Co-operation Treaty designating Saint Vincent and the Grenadines, filed between 6th August, 2002 and the commencement of this Act, fulfilling the requirements under that treaty and being accorded an international filing date, shall be treated as an application for a patent under this Act as of the international filing date, which date shall be considered to be the date of filing in Saint Vincent and the Grenadines.

74. International Bureau as receiving office

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

(2) The Minister may enter into an agreement of the kind referred to in rule 19.1(b) of the Regulations made under the Patent Co-operation Treaty, authorising an intergovernmental organisation or the national office of another Contracting State which is a party to the Patent Co-operation Treaty, to act instead of the International Bureau as receiving office for applicants who are residents or nationals of Saint Vincent and the Grenadines.

75. Filing of international applications with the International Bureau

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

76. CIPO as designated office

CIPO shall act as the designated office in respect of an international application in which Saint Vincent and the Grenadines is designated for the purposes of obtaining a national patent under this Act.

77. CIPO as elected office

CIPO shall act as the elected office in respect of an international application in which Saint Vincent and the Grenadines is designated for the purposes of obtaining a national patent, if the applicant elects Saint Vincent and the Grenadines for the purposes of international preliminary examination under the Patent Co-operation Treaty.

78. National processing

CIPO as designated office or elected office shall not commence the processing of an international application designating Saint Vincent and the Grenadines before the expiration of the period referred to in section 79, unless the applicant complies with the requirements of that section, and files with the CIPO an express request for early commencement of such processing.

79. Entering national phase

(1) The applicant in respect of an international application designating Saint Vincent and the Grenadines shall, before the expiration of the time limit applicable under Article 22 or 39 of the Patent Co-operation Treaty, or of such later time limit as may be prescribed in the Regulations—

- (a) where the application is not in English, file a certified translation into English at CIPO; and
- (b) pay the prescribed fee.

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

80. Implementation of Patent Co-operation Treaty

(1) The Patent Co-operation Treaty, the Regulations and administrative instructions made thereunder shall be given full effect.

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

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

(4) The Registrar shall not grant or refuse to grant a patent on an international application before the expiration of the time limit prescribed in rule 52 as provided for in Article 28 or in rule 78 as provided for in Article 41 as the case may be, except with the consent of the applicant in writing.

(5) Where an international application for a patent which purports to designate Saint Vincent and the Grenadines is refused an international filing date under the Patent Co-operation Treaty because—

- (a) it is declared considered withdrawn; or

- (b) the International Bureau has made a finding under Article 12(3) of the Treaty; or
- (c) the receiving office has declared that the designation of Saint Vincent and the Grenadines is considered withdrawn,

and the Registrar determines that such refusal was caused by an error or omission in the CIPO or any other institution having functions under the Patent Co-operation Treaty, he may direct that the application shall be treated as an application under this Act.

81. Judicial notice of certain treaties and instruments thereunder

(1) Judicial notice shall be taken of the Paris Convention, the Patent Co-operation Treaty and of any bulletin, journal or Official Journal published under such Convention or Treaty.

(2) Any document mentioned in any such bulletin, journal or Official Journal shall be admissible as evidence of any instrument or other act thereby communicated, or of any institution established by or having functions under any Convention or Treaty mentioned in subsection (1).

PART XIV

Offences

82. Falsification of register, etc.

If a person makes or causes to be made a false entry in any register kept under this Act, a writing falsely purporting to be a copy or reproduction of an entry in the register, or produces, tenders or causes to be produced or tendered in evidence any such writing knowing the entry or writing to be false, he shall be liable—

- (a) on summary conviction, to a fine not exceeding five thousand dollars;
- (b) on conviction on indictment, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding five years.

83. Unauthorised claim of patent rights

(1) If a person falsely represents that anything disposed of by him for value is a patented product or process he shall, subject to the provisions of this section, be liable on summary conviction to a fine not exceeding five thousand dollars.

(2) For the purposes of subsection (1) a person who for value disposes of an article having stamped, engraved or impressed on it or otherwise applied to it the word “patent” or “patented” or anything expressing or implying that the article is a patented product, shall be taken to represent that the article is a patented product.

(3) Subsection (1) does not apply where the representation is made in respect of a product after the patent for that product or, as the case may be, the process in question has expired or been revoked and before the end of a period which is reasonably sufficient to enable the accused to take steps to ensure that the representation is not made (or does not continue to be made).

(4) In proceedings for an offence under this section it shall be a defence for the accused to prove that he used due diligence to prevent the commission of the offence.

84. Unauthorised claim that patent has been applied for

(1) If a person represents that a patent has been applied for in respect of any article disposed of for value by him, and—

- (a) no such application has been made; or
- (b) any such application has been refused or withdrawn,

he shall, subject to the following provisions of this section, be liable on summary conviction to a fine not exceeding five thousand dollars.

(2) Subsection (1)(b) does not apply where the representation is made (or continues to be made) before the expiry of a period which commences with the refusal or withdrawal and which is reasonably sufficient to enable the accused to take steps to ensure that the representation is not made (or does not continue to be made).

(3) For the purposes of subsection (1), a person who for value disposes of an article having stamped, engraved or impressed on it or otherwise applied to it the words “patent applied for” or “patent pending” or anything expressing or implying that a patent has been applied for in respect of the article, shall be taken to represent that a patent has been applied for in respect of the article.

(4) In any proceedings for an offence under this section it shall be a defence for the accused to prove that he used due diligence to prevent the commission of such an offence.

85. Offences by corporations

(1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

86. Time limit for prosecution

Notwithstanding any law to the contrary, prosecution for an offence under this Act shall not be commenced after the expiration of five years after the commission of the offence or one year after the discovery thereof, which ever date last occurs.

PART XV*General and Miscellaneous***87. Representation**

(1) A person who is a barrister-at-law and who is admitted to practice law in Saint Vincent and the Grenadines shall be entitled to represent any party in any matter or proceeding before the Registrar under this Act.

(2) An applicant whose ordinary residence or principal place of business is outside of Saint Vincent and the Grenadines shall be represented by a barrister-at-law who is admitted to practice law in Saint Vincent and the Grenadines.

88. Service by post

Any notice required or authorised to be given by or under this Act and any application or other document so authorised or required to be made or filed, may be given, made or filed by post or in any other prescribed manner.

89. Immunity as regards official acts

Neither the Minister nor any employee of the Crown—

- (a) shall be taken to warrant the validity of any patent granted under this Act or any treaty or international convention to which Saint Vincent and the Grenadines is a party; or
- (b) shall incur any liability by reason of or in connection with any examination or investigation required or authorised by this Act or any such treaty or convention, or any report or other proceedings consequent on any such examination or investigation.

90. Saving in respect of rights to sell forfeited articles

Nothing in this Act affects the right of the Crown or any person in the employment of the Crown to dispose of or use articles forfeited under the laws relating to customs and excise.

91. Act binds Crown

This Act shall bind the Crown.

92. Regulations

(1) The Minister may make Regulations providing for any matter which is to be prescribed under this Act, or for giving effect to the purposes of this Act.

(2) Without limiting the generality of subsection (1), the Minister may make Regulations providing for the processing of international applications by, and other function of, the Registrar in connection with the Patent Co-operation Treaty, including the fees payable, time limits and other requirements relating to international applications.

93. Repeal and transitional provisions

(1) The Patents Act and the Registration of United Kingdom Patents Act and rules made thereunder are repealed.

[Chapter 110 and Chapter 112 of the Revised Laws 1990 Edition.]

(2) Where, upon the commencement of this Act, an application made under either of the former Acts is pending, such an application shall be subject to the provisions of this Act.

(3) A patent granted under the Patents Act before the appointed day shall remain in force for twenty years from the date of the application.

(4) A patent granted under the Registration of United Kingdom Patents Act shall expire on the date on which it would have expired under that Act had that Act not been repealed.

(5) Nothing in this Act applies to or affects—

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