

Patent Law, 1992*

(of December 30, 1992)

Ghana

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Part I Patentability

Definition of invention

1.—(1) For the purposes of this Law, “invention” means a solution to a specific problem in the field of technology.

(2) An invention may be, or may relate to, a product or a process.

(3) The following shall not be regarded as inventions within the meaning of subsection (1) of this section—

(a) discoveries, scientific and mathematical theories;

(b) plant or animal varieties or essentially biological processes for the production of plants or animals, other than microbiological processes and the products of such processes;

(c) schemes, rules or methods for doing business, performing purely mental acts or playing games;

(d) methods of treatment of the human or animal body by surgery or therapy, as well as diagnostic methods; this provision shall not apply to products for use in any of these methods;

(e) mere presentation of information;

(f) computer programmes.

Patentable inventions

2. An invention is patentable if it is new, involves an inventive step and is industrially applicable.

Novelty

3.—(1) An invention is new if it is not anticipated by prior art.

(2) Everything made available to the public anywhere in the world by means of written disclosure (including drawings and other illustrations) or by oral disclosure, use, exhibition or other non-written means shall be considered prior art provided that such disclosure or other act occurred before the date of the filing of the application to register the patent or, if priority is claimed, before the priority date validly claimed in respect of the invention.

(3) For the purpose of evaluating novelty only, an application for the grant of a patent or a utility certificate in Ghana shall be considered as included in the prior art as from the filing date of such application or, if priority is claimed, as from the date of its validly claimed priority to the extent to which its content is available to the public in accordance with this Law and regulations made thereunder or in accordance with the Patent Cooperation Treaty.

(4) A disclosure of the invention shall not be taken into consideration if it occurred within six months preceding the date of the application and if it was by reason or in consequence of—

(a) acts performed by the applicant or his predecessor in title; or

(b) an evident abuse committed in relation to the rights of the applicant or his predecessor in title.

Inventive step

4.—(1) An invention shall be considered as involving an inventive step if, having regard to the prior art, within the meaning of section 3(2) of this Law, it would not have been obvious to a person skilled in the art to which the invention pertains on the date of the filing of the application or, if priority is claimed, on the priority date validly claimed in respect of the invention.

(2) In relation to subsection (1) of this section, the prior art shall be considered as a whole, including not only individual elements of the prior art, or parts of elements taken separately, but also combinations of such elements or parts of elements where such combinations are obvious to a person skilled in the art.

Industrial application

5. An invention shall be considered industrially applicable if, according to its nature, it can be made or used, in the technological sense, in any kind of industry including agriculture, fishery and services.

Prohibition by law, public order or morality

6. A patent may be obtained in respect of an invention the exploitation of which is prohibited by law, except where the prohibition relates to public order or morality.

Temporary exclusion from patentability

7.—(1) The Secretary if satisfied that it is in the interest of national security, economy, health or any other national concern so to do, and after consultation with the Patent Policy Committee established under section 69 of this Law, may by legislative instrument exclude inventions for products or processes for the manufacture of such products as may be specified from patentability for a period of not more than 10 years.

(2) Any exclusion under subsection (1) of this section may for the same or similar reason and after the necessary consultation be extended by the Secretary by legislative instrument for a further period provided each such period does not exceed 10 years.

Part II Right to Patent and Naming of Inventor

Right to patent

8.—(1) The right to a patent shall belong to the inventor.

(2) If two or more persons have jointly made an invention, the right to the patent shall belong to them jointly.

(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 provided that the application leads to the grant of the patent.

(4) The right to a patent may be assigned or transferred by succession or by operation of law.

(5) Sections 40 to 44 of this Law shall apply with the necessary modifications as may be necessary to contracts assigning the right to a patent.

(6) Subject to the provisions of subsection (3) of this section, the inventor shall apply for a patent either by himself or through his duly authorised agent.

Unauthorised application based on invention of another person

9.—(1) Where the essential elements of the invention claimed in a patent application or patent were derived from an invention for which the right to the patent belongs under section 8 or 10 to a person other than the applicant or owner of the patent, that person may request the court to order the assignment to him of the patent application or patent.

(2) An action to enforce a right under subsection (1) of this section shall notwithstanding any law to the contrary, be brought not later than one year from the time when the person who has the right to the patent became aware of the filing of the application or of the grant of the patent.

Inventions made in execution of a commission or by employee

10.—(1) Notwithstanding the provisions of section 8 and in the absence of contractual provisions to the contrary, the right to a patent for an invention made in execution of a commission or an employment contract the express object of which is research or the exercise of inventive activity by the employee shall belong to the person who commissioned the work or to the employer as the case may be; except that where the invention is of very exceptional importance the inventor shall be entitled to reasonable remuneration.

(2) Subject to subsection (1) of this section, and in the absence of an order of the Patents Tribunal established under section 70 of this Law varying the proportions, the right to a patent for an invention made by an employee as a result of the use of the resources, data, means, materials, installations or equipment of the employer shall, subject to the provisions of subsections (3) to (8) of this section, belong jointly and in equal shares to the employee and employer.

(3) An employee who makes an invention referred to in subsection (2) of this section shall immediately inform his employer of it in a written report.

(4) The employer shall make the application for the patent or renounce his interest in the invention or the exploitation thereof at the request of the employee within one month of the request.

(5) The employer shall have an exclusive right to the exploitation of an invention referred to in subsection (2) of this section but shall pay the employee a half share of the profits derived from such exploitation.

(6) Where the employer renounces his interest in the invention, or in its exploitation within Ghana, or fails to exploit the invention within a year from the date of the grant of a patent thereon, the employee may apply to the Tribunal for an order that the invention shall be his exclusive property.

(7) An employer with a joint interest in the invention who does not intend to file a patent application outside Ghana for the invention shall authorise the employee to do so.

(8) The advantages conferred on the employee by this section cannot be reduced by contract.

Naming of inventor

11.—(1) The inventor of any thing in respect of which a patent is granted shall be named as such in the patent unless in a special written declaration addressed to the Registrar, the inventor indicates that he does not wish to be named.

(2) Any promise or undertaking by the inventor made to any person to the effect that he will make such declaration shall be void.

Part III **Application for Patent and Refusal of Patent**

Application for patent

12.—(1) The application for a patent, accompanied by the prescribed fee, shall be made to the Registrar and shall contain—

(a) a request for the patent;

(b) a description disclosing the invention in a manner sufficiently clear and complete for the invention to be evaluated, carried out or worked by a person possessing average skill in and average knowledge of the art to which the invention relates and in particular indicating the best mode known to the applicant for carrying out the invention;

(c) one or more claims which define the matter for which protection is sought; in clear and concise language and in a manner fully supported by the description;

(d) an abstract to serve the purpose of technical information which shall not be taken into account when interpreting the scope of the protection sought; and

(e) where necessary, one or more drawings for the better understanding of the invention.

(2) The applicant may and, where his ordinary residence or principal place of business is outside Ghana, shall be represented by an agent admitted to practice before the Patent Office.

(3) The request shall contain a petition to the effect that a patent be granted, the name of and other prescribed data concerning the applicant, the inventor and the agent, if any, and the title of the invention.

(4) Where the applicant is not the inventor, the request shall be accompanied by a statement justifying the applicant's right to the patent.

(5) The appointment of an agent may be indicated by designation of the agent in the request or by the furnishing of a power of attorney signed by the applicant, but where under subsection (2) of this section an agent must be appointed he shall be specified in the request.

Unity of invention

13. The application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

Amendment and division of application

14.—(1) The applicant may amend the application provided that the amendment shall not go beyond the disclosure in the initial application.

(2) The applicant may divide out from the application one or more applications, described as "divisional applications", provided that each divisional application shall not go beyond the disclosure in the initial application.

Right of priority

15.—(1) The application may contain a declaration claiming the priority, as provided for in the Paris Convention, of one or more earlier national, regional or international applications filed by the applicant or his predecessor in title in or for any State party to the Paris Convention.

(2) The applicant shall, within three months from the filing of the application containing the declaration, furnish to the Registrar 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 Cooperation Treaty, by the International Bureau.

(3) The effect of the declaration referred to in subsection (1) of this section shall be as provided in the Paris Convention.

(4) If the requirements under this section and the rules relating thereto have not been complied with, the declaration referred to in subsection (1) of this section shall be disregarded.

Information concerning corresponding foreign applications and grants

16.—(1) The applicant shall, at the request of the Registrar, furnish him with the date and number of any foreign application, for a patent or other title of protection filed by the applicant relating to the same or essentially the same invention as that claimed in the application filed with the Registrar.

(2) The applicant shall, at the request of the Registrar, furnish him with the following documents in respect of foreign applications referred to in subsection (1) of this section, namely—

(a) copies of any communication received by the applicant concerning the results 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 foreign application; and

(c) a copy of any final decision rejecting the foreign application or refusing the grant requested in the foreign application.

(3) The applicant shall, at the request of the Registrar, furnish him with a copy of any decision invalidating the patent or other title of protection granted to the applicant on the basis of the foreign application referred to in subsection (2) of this section.

(4) The applicant shall, at the request of the Registrar, furnish him with copies of any communication received by the applicant concerning the results of any search or examination carried out in respect of any foreign application other than an application referred to in subsections (2) and (3) of this section.

(5) The documents furnished under this section shall serve the purpose of facilitating the evaluation of novelty and inventive step with respect to the invention claimed in the application filed with the Registrar or in the patent granted on the basis of that application.

(6) The applicant shall have the right to submit comments on the documents furnished under this section.

Withdrawal of application

17. At any time before the grant of a patent or notification of rejection of the application or of refusal to grant a patent, the applicant may withdraw the application.

Filing date and examination of application as to form

18.—(1) The Registrar shall accord as the filing date, the date of receipt of the application provided that at the time of receipt, the documents filed contain—

(a) the name of the applicant; and

(b) a part which on the face of it appears to be a claim or claims.

(2) If the Registrar finds that the application did not at the time of receipt fulfil the requirements referred to in subsection (1) of this section he shall invite the applicant to file the required correction and if the applicant complies with the invitation, the Registrar shall accord as the filing date the date of receipt of the

correction but if the applicant does not comply with the invitation, the Registrar shall treat the application as if it had not been filed.

(3) Where the application refers to drawings which are not included in the application, the Registrar shall invite the applicant to furnish the missing drawings, and if the applicant complies with the said invitation the Registrar shall accord as the filing date the date of receipt of the missing drawings; otherwise he shall treat any reference to the said drawings as non-existent.

(4) Where no invitation under subsection (2) or (3) of the section has been sent to the applicant and the applicant nevertheless files a correction pertaining to any of the requirements under subsection (1) of this section, the Registrar shall accord as the filing date the date of the receipt of the correction, provided the correction was received within 30 days from the date of receipt of the application.

(5) Where the request is accompanied by the statement on the right to the patent referred to in section 12(4), the Registrar shall send a copy of the statement to the inventor, who shall have the right to inspect the application and receive, at his own expense, a copy thereof.

(6) The Registrar shall cause an examination of the application to be carried out as to whether—

(a) the request complies with the requirements of section 12(3), 12(4) and 12(5) of this Law and rules pertaining thereto;

(b) the description, claims and, where applicable, the drawings comply with the physical requirements prescribed by the regulations;

(c) the application contains an abstract;

(d) the applicant has complied with a request made by the Registrar under section 19 of this Law; and

(e) the prescribed fees referred to in section 12(1) of this Law have been paid.

(7) Where the Registrar finds that the application is defective in respect of any of the matters referred to in this section, he shall invite the applicant to remedy the defect provided that any corrections made to the application shall not be such as would require a change of the filing date, and if the applicant does not comply with the said invitation, the application shall be rejected by the Registrar.

(8) Unless the application is to be the subject of an international-type search under section 19, the Registrar shall cause an examination to be carried out as to whether the application appears to comply with the requirement of unity of invention prescribed by section 13 of this Law and rules pertaining thereto.

(9) If the Registrar is of the opinion, that the requirement of unity of invention may not have been complied with he shall invite the applicant to restrict or divide the application and if the applicant does not comply with the invitation the application shall be rejected by the Registrar.

International-type search

19.—(1) The Registrar may direct that any application found in order as to form be the subject of an international-type search in accordance with the provisions of the Patent Cooperation Treaty.

(2) When a direction under subsection (1) of this section is made, the Registrar shall invite the applicant to pay the fees prescribed for the purpose, and if the applicant does not comply with the invitation, the application shall be rejected by the Registrar.

(3) Upon receipt of the report of the international-type search the Registrar may request the applicant to furnish him with a copy of any document cited in the report, and if without lawful excuse the copy requested is not furnished within the prescribed time, the applications shall be rejected.

(4) Where it appears from the report on the international-type search or from the refusal to establish such a report that the subject of the application or of any claim is not an invention within the meaning of section 1 of this Law, the Registrar shall reject the defective application or consider the defective claim to be

withdrawn, unless the applicant satisfies him that the subject of the application or claim constitutes an invention.

(5) Where it appears from the report on the international-type search or from the refusal to establish such a report that—

(a) the description, claim or, where applicable, the drawings do not comply, in whole or in part, with the requirements laid down in this Law, or regulations made thereunder, to such an extent that no meaningful search could be carried out; or

(b) the application does not comply in whole or in part with the requirement of unity of invention laid down in section 13 of this Law and rules relating thereto; or

(c) the invention claimed in the application obviously does not fulfil the requirements of novelty specified in section 3 of this Law,

the Registrar shall reject the application unless the applicant either satisfies him that the said requirements have been fulfilled or amends or divides the application so as to comply with the requirements.

Search and examination as to substance

20.—(1) The Secretary may by legislative instrument direct the examination as to substance of applications for patent and may waive such examination where he deems it necessary in the national interest.

(2) The Secretary, on the advice of the Patent Policy Committee, may by legislative instrument, direct that applications for patent relating to a specified technical field shall not be the subject of an examination as to substance.

(3) Where the Secretary directs that an application for a patent be the subject of an examination as to substance he may by such instrument further designate the authority or agency by which the examination is to be carried out and the condition for the examination. The Secretary may add further technical fields to, or remove any technical field from, those covered by the direction under subsection (1) of this section.

(4) If, in the opinion of the Registrar, the subject matter of an invention for which a patent is sought does not fall within the terms of direction given under subsection (2) of this section, he shall cause a search and examination to be carried out as to whether—

(a) the claimed invention is patentable within the meaning of sections 2 to 5 of this Law;

(b) the claimed invention is not excluded from protection under section 6 or 7 of this Law;

(c) the description and the claims comply with the requirements prescribed by sections 12(1)(c) and 13 of this Law and rules pertaining thereto;

(d) any drawings which are necessary for the understanding of the claimed invention have been furnished.

(5) For the purposes of the examination under subsection (4) of this section, the Registrar may transmit the application together with all relevant documents, to the designated authority or agency for a preliminary examination as to the patentability of the claimed invention.

(6) The authority or agency to which the application is transmitted shall make a report on the conclusion of its examination and transmit it to the Registrar with a copy to the applicant.

(7) Where, after taking due account of the conclusions of any report referred to in subsection (6) of this section, the Registrar is of the opinion that any of the conditions referred to in subsection (4) of this section are not fulfilled, he shall notify the applicant accordingly and invite him to submit his observations and where applicable to amend his application.

(8) Where despite any observation or amendment submitted by the applicant the Registrar finds that any of the conditions referred to in subsection (4) of this section are not fulfilled he shall refuse the grant of a patent and notify the applicant accordingly.

(9) Where an applicant states in his application that an application covering the same invention has been submitted to and is to be examined as to substance by an authority or agency in accordance with an order of the Secretary, the Registrar shall have the power to postpone a decision on any examination as to substance until the results of the examination by the authority or agency specified are transmitted to the Registrar.

Grant, registration and publication of patent

21.—(1) Unless the application has been rejected under section 18 or 19 or a patent has been refused under section 20, a patent shall be granted and issued to the applicant in the prescribed form.

(2) Any patent granted shall be registered in the register.

(3) The prescribed particulars of any patent granted shall be promptly published by the Registrar in the prescribed manner.

Appeals

22. The applicant may appeal to the Tribunal against any decision by which the Registrar accords a filing date, rejects the application, treats the application as if it had not been filed, considers any of the claims to be withdrawn or refuses to grant a patent.

Part IV International Applications

Interpretation for Part IV

23. For the purposes of this Part—

“international application” means an international application filed in accordance with the Patent Cooperation Treaty and the regulations made thereunder;

“receiving office”, “designated office”, “elected office”, “international preliminary examination report” and the expressions “to designate” and “to elect” have the meanings given to them in the Patent Cooperation Treaty;

“the Treaty” means the Patent Cooperation Treaty signed in Washington on 19th June, 1970.

Functions of the Registrar’s office

24.—(1) The Registrar’s office shall serve as—

(a) a receiving office where an international application is filed with it and the applicant is a national or a resident of Ghana;

(b) a designated office or an elected office in the case of any international application in which Ghana is designated or elected.

(2) The functions of the Registrar’s office under this Part shall be performed in accordance with the provisions of the Treaty, the regulations issued under the said Treaty as well as with the provisions of this Law and regulations made thereunder, but in case of conflict, the provisions of the Treaty, the regulations thereunder and the Administrative Instructions under the Treaty shall apply.

Unsearched or unexamined international applications or parts thereof; obvious lack of novelty

25.—(1) Where, in accordance with Article 17(2) of the Treaty, an international search report is not established or relates to only one or some of the claims of an international application the Registrar shall reject the international application or consider as withdrawn any claim not covered by the said report, unless the applicant satisfies him that the refusal to establish the said report in whole or in part was not justified.

(2) Where in accordance with Article 17(3) of the Treaty, the international search report relates to only one or some of the claims due to the applicant's refusal to pay additional fees, those parts of the international application which consequently have not been searched shall be considered withdrawn, unless the applicant pays the special fee prescribed or satisfies the Registrar that the invitation to pay the said additional fees was not justified.

(3) Where an international preliminary examination report with respect to an international application has been communicated to the Registrar's office, subsections (4) to (6) of this section shall apply.

(4) Where, in the case of lack of compliance with the requirement of unity of invention, the international preliminary report indicates that the international preliminary examination—

(a) under Article 34(3)(a) of the Treaty was carried out on restricted claims; or

(b) under Article 34(3)(c) of the Treaty, was carried out on the main invention only,

those parts of the international application indicated as not having been the subject of international preliminary examination shall be considered withdrawn unless the applicant pays the special fee prescribed or, in the case of Article 34(3)(c) of the Treaty, satisfies the Registrar that the invitation of the International Preliminary Examining Authority was not justified.

(5) Where, in the case of defects under Article 34(4) of the Treaty, the international preliminary examination report states, with respect to the entire international application or one or some of its claims only, that the defects exist, the international application or the claim for which no statement under the second sentence of Article 35(2) of the Treaty is made in the said report shall be considered withdrawn unless the applicant satisfies the Registrar that the said defects do not exist.

(6) If it is apparent from an international search report or an international preliminary examination report that an invention claimed in an international application does not fulfil the requirements of novelty prescribed by section 3 of this Law, the Registrar shall not grant a patent upon the application unless the applicant either satisfies him that the requirement has been fulfilled or amends the claims in a way that fulfils the requirement.

Provisional protection of published international application

26.—(1) The reliefs specified in section 59 of this Law may be requested in respect of acts committed before the grant of the patent but after the date of international publication under Article 21 of the Treaty, provided that the said international publication was effected in English.

(2) Where the international publication was effected in a language other than English the provisions of subsection (1) of this section shall apply, provided the applicant had transmitted an English translation of the said international publication to the infringer and only in respect of acts committed by the infringer after he had received the translation.

Part V **Rights and Obligations of the Applicant or the Owner of the Patent**

Rights and obligations of applicant

27.—(1) The applicant or the owner of a patent shall have the following rights—

(a) to be granted the patent, where the relevant requirements under this Law are fulfilled;

(b) after the grant of the patent, and within the limits defined in section 30 of this Law, to preclude any person from exploiting the patented invention in the manner specified in section 28 of this Law;

(c) to conclude licence contracts, as provided for in Part VIII, subject to the obligation referred to in subsection (2)(e) of this section.

(2) The applicant or owner of the patent shall have the following obligations—

(a) to disclose the invention in a clear and complete manner and in particular to indicate the best mode known to the applicant for carrying out the invention in accordance with the requirements and subject to the sanctions provided by this Law;

(b) to give information concerning corresponding foreign applications and grants, as prescribed by section 16 of this Law subject to the sanctions provided for in section 18;

(c) to work the patented invention in the country within the time limits and subject to the sanctions provided for in Parts VI and IX of this Law;

(d) to pay the fees prescribed by this Law and regulations made thereunder;

(e) in connection with licence contracts and contracts assigning patents or patent applications, to refrain from making any of the abusive provisions specified in section 41 of this Law.

Rights of patent owner

28. The owner of the patent shall have the right to preclude any person from exploiting the patented invention by any of the following acts—

(a) when the patent has been granted in respect of a product—

(i) making, importing, offering for sale, selling and 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) making, importing, offering for sale, selling or stocking for any such purpose a product obtained directly by means of the process.

Scope of protection

29. The scope of the protection under a patent shall be determined by the terms of the claims; however, the description and the drawings included in the patent may be used to interpret the claims.

Limitation of rights

30. The rights under the patent shall—

(a) extend only to acts done for industrial and commercial purposes and in particular not to acts done for scientific research;

(b) not extend to acts in respect of articles which have been put on the market in Ghana by the owner of the patent or with his express consent;

(c) not extend to the use of articles on aircraft, land vehicles or vessels of other countries which temporarily or accidentally enter the airspace, territory or waters of Ghana;

(d) be limited by the provisions on the patent terms contained in Part VI of this Law;

(e) be limited by the provisions on compulsory licences on grounds of public interest or based on interdependence of patents contained in Part IX of this Law and by the provisions on state exploitation of patented inventions contained in Part XI of this Law.

Part VI **Term of Patent and Annual Fees**

Term of patent and extension

31.—(1) Subject to subsections (2), (3) and (4) of this section a patent shall expire at the end of the tenth year after the date of the filing of the application.

(2) On request of the owner of the patent, or of a licensee, made not more than 12 months and not less than one month before the expiration of the patent under subsection (1) of this section, and on payment of the prescribed fee, the Registrar shall, before the expiration of the patent under subsection (1) of this section, and on payment of the prescribed fee, extend the term of that patent for a period of five years, provided that the owner or licensee proves, to the satisfaction of the Registrar, either—

(a) that the invention which is the subject of the said patent is being worked in Ghana at the date of the request; or

(b) that there are legitimate reasons for failing to work the invention.

(3) On the request of the owner of the patent, or of a licensee, made not more than 12 months and not less than one month before the expiration of the patent under subsection (2) of this section—

(a) on the ground that the invention which is the subject of the patent is being worked in Ghana at the date of the request; and

(b) on payment of the prescribed fee, the Registrar shall, if satisfied that the ground is correct, extend the duration of the patent for a further period of five years.

(4) Where the Registrar does not reject the request referred to in subsection (2) of this section within six months after its receipt, he shall be deemed to have extended the term of the patent as requested.

(5) A patented invention is worked if the patented product is made or if the patented process is used in Ghana, by any effective and serious establishment and on a scale which is reasonable in the circumstances, but importation shall not constitute working.

(6) The owner of a patent or a licensee may appeal to the court against any refusal to extend the term of the patent under subsection (2) or (3) of this section.

Annual fees

32.—(1) In order to maintain an application or patent an annual fee shall be paid in advance to the Registrar's office starting with the second year after the date of the filing of the application.

(2) The annual fees shall be prescribed according to a scale which increases with each year.

(3) Subject to section 24(2) of this Law, if an annual fee is not paid in accordance with this section the application shall be deemed to have been withdrawn or the patent shall lapse, and in the case of the latter the said lapse shall promptly be published by the Registrar.

(4) A grace period of six months shall be granted for the payment of the annual fee upon payment of a prescribed surcharge.

(5) Within 12 months from the expiration of the grace period referred to in subsection (4) of this section, any interested person may, upon payment of the prescribed fee request the Registrar to restore an application that is deemed to have been withdrawn, or a patent that has lapsed, by virtue of subsection (3) of this section.

(6) If the Registrar is satisfied that the failure to pay the annual fee concerned was unintentional and that all annual fees due have been paid, he shall make an order restoring the application or patent, as the case may be; such order in respect of a patent shall be published immediately in the *Gazette*.

(7) Any interested person may appeal to the court against the decision of the Registrar granting or refusing to grant a request for restoration.

(8) Where a patent is restored under subsection (5) of this section no proceedings may be brought by virtue of the said patent—

(a) with respect to any acts performed after the lapse of the patent and before the date of the order of restoration; or

(b) with respect to any acts performed after the date of the order for restoration in relation to articles imported into the country, or manufactured therein after the lapse of the patent and before the date of the order for restoration.

Part VII

Change in Ownership and Joint Ownership of Application and Patents

Change in ownership of application and patents

33.—(1) All contracts assigning applications or patents shall be in writing and shall be signed by the parties thereto, otherwise they shall be invalid.

(2) Sections 40 to 44 of this Law shall apply with such modifications as may be necessary to contracts assigning applications or patents.

(3) Any change in ownership of an application or a patent shall be recorded in the register in the prescribed manner and on the payment of the prescribed fee.

(4) Until such change has been recorded, any document evidencing the change in ownership shall not be admissible in any proceedings as evidence of the title of any person to an application or patent, unless the court otherwise directs.

Joint ownership of applications and patents

34. In the absence of any agreement to the contrary between all the parties, joint owners of an application or a patent may—

(a) separately transfer their shares in the application or patent;

(b) exploit the patented invention and preclude any person from exploiting the patented invention;

(c) only jointly grant permission to a third person to do any of the acts referred to in section 28 of this Law.

Part VIII

Contractual Licences

Interpretation for Part VIII

35. In this Part unless a contrary intention appears—

“acts referred to in section 28 of this Law” includes those acts where they relate to an application;

“licence contract” means any contract by which a party grants permission to another person, whether or not a party to the contract, to do any of the acts referred to in section 28 of this Law in respect of an invention for which a patent has been granted or an application is pending;

“licensee” means the person to whom the said permission is granted;

“licensor” means the party to the licence contract who grants the said permission;

“third person” means a person other than the licensor or the licensee.

Rights of licensee

36. In the absence of any provision to the contrary in the licence contract—

(a) the licensee shall be entitled during the period of patent protection to do in respect of the invention all the acts referred to in section 28 of this Law without limitation as to time throughout Ghana, and through an application of the invention;

(b) the licensee may not grant permission to any third person to do any of the acts referred to in section 28.

Right of licensor to grant further licences and use invention

37.—(1) In the absence of any provision to the contrary in the licence contract, the licensor may grant permission to any third person to do, and may himself do, any of the acts referred to in section 28 which are covered by the said contract.

(2) If the licence contract provides that the contract or the permission granted is exclusive then—

(a) the licensor may neither grant permission to any third person to do, nor himself do, any of the acts referred to in section 28 which are covered by the said contract; and

(b) the licensee shall be considered an exclusive licensee for the purposes of this Law.

Effect of patent not being granted or being invalidated

38. Where, before the expiration of the licence contract, any of the following events occur with respect to any application or patent referred to in that contract namely—

(a) the application is withdrawn;

(b) the application is finally rejected;

(c) the grant of a patent is finally refused; or

(d) the patent is finally declared invalid,

the court may make any order that it deems reasonable under the circumstances for the repayment of the royalties, or the return of any other consideration, paid or given under the said contract, directly relating to any such application or patent.

Form of licence contracts

39. All licence contracts shall be in writing and shall be signed by the parties thereto otherwise they shall not be valid.

Petition for registration

40.—(1) All licence contracts, including modifications thereof, shall be submitted to the Registrar for registration in the register in the form of a petition.

(2) A petition for registration may be made by any party to the contract.

(3) The petition shall be subject to the payment of the prescribed fee and shall be accompanied by the prescribed documents.

(4) The Registrar shall issue to the petitioner a receipt, which shall be proof of the fact of filing the petition and of the date on which it was filed.

(5) If no receipt is issued within 14 days from the date of filing the petition, the petitioner may rely on other evidence to prove the said fact and date.

(6) Where—

(a) section 39 of this Law or subsection (2) or (3) of this section or rules relating thereto have not been complied with; or

(b) the licence contract is not registrable under section 41 of this Law,

the Registrar shall refuse to register the licence contract stating the reasons for such refusal.

(7) Before refusing to register the licence contract, the Registrar shall notify the petitioner and allow the parties—

(a) to submit any observations;

(b) to correct any defect in the petition; or

(c) to amend any term, or to correct any defect, in the licence contract that has been declared by the Registrar to be a term or defect precluding registration,

within 45 days from the date of the notification referred to in this section.

(8) A licence contract shall be void if the registration has been refused by the Registrar in accordance with the provisions of this Law.

Prohibited terms in licence contracts

41. The Registrar may refuse to register a licence contract if the effect of any of its terms is—

(a) to permit or require the importation of technology from abroad when substantially similar or equivalent technology may be obtained on the same or more favourable conditions without importation from abroad;

(b) to require payment of a price, royalty or other consideration which is disproportionate to the value of the technology to which the contract relates;

(c) to require the licensee to acquire any materials from the licensor or from sources designated or approved by him, unless it is otherwise impossible, for all practical purposes, to ensure the quality of the products to be produced;

(d) to prohibit the licensee from acquiring, or to restrict his acquisition of, any materials from any source, unless it is otherwise impossible, for all practical purposes, to ensure the quality of the products to be produced;

(e) to prohibit the licensee from using, or to restrict his use of any materials which are not supplied by the licensor or by a source designated or approved by him, unless it is otherwise impossible, for all practical purposes, to ensure the quality of the products to be produced;

(f) to require the licensee to sell products produced by him under the contract exclusively or principally to persons designated by the licensor;

(g) to require the licensee to make available to the licensor without appropriate consideration any improvements made by the licensee with respect to the technology to which the contract relates;

(h) to limit the volume of the product produced by the licensee with the help of the technology to which the contract relates;

- (j) to prohibit or restrict the export of products produced by the licensee;
- (j) to require the licensee to employ on a permanent basis persons designated by the licensor;
- (k) to impose restrictions on research or technological development carried out by the licensee;
- (l) to prohibit or restrict the use by the licensee of any technology to which the contract relates;
- (m) to extend the coverage of the contract to technology not required for the use of the technology which is the main subject of the contract and to require consideration for such additional technology;
- (n) to fix prices for the sale or resale of the products produced by the licensee with the help of the technology to which the contract relates;
- (o) to exempt the licensor from any liability consequent upon any defect inherent in the technology to which the contract relates or restrict such liability;
- (p) to prohibit or restrict the use by the licensee, after the expiration of the contract, of the technology acquired as a result of the contract, subject to any right of the licensor under the patent;
- (q) to require that disputes arising from the interpretation or performance of the contract be governed by a law other than laws of Ghana or that such disputes be brought before courts located in a country other than Ghana;
- (r) to require the licensee to pay royalties or other consideration beyond the period of the patent which is the subject of the contract; or
- (s) to require the licensee to pay royalties or other consideration for patents not granted or registered in Ghana.

Registration of contracts

42.—(1) When the contract has been examined and found formally and substantially acceptable for registration, the Registrar shall register the contract and issue a certificate of registration to the petitioner.

(2) Where the Registrar fails—

(a) to notify the petitioner of any defect in the petition or of terms or defects precluding registration of the licence contract within 90 days from the date of the petition; or

(b) to notify the petitioner of his decision to refuse to register the licence contract within 90 days from the date of the notification under paragraph (a) of this subsection,

the licence contract shall be deemed to have been registered and the Registrar shall issue a certificate of registration to the petitioner.

(3) If no certificate is issued under subsection (2) of this section within 14 days from the expiration of the 90-day period the petitioner may rely on other evidence to prove the fact of registration.

(4) The registration shall take effect—

(a) if the petition was made within 60 days from the conclusion of the contract, on the date of the conclusion of the contract; and

(b) in all other cases, on the date of the petition.

(5) Where the petition is corrected or the licence contract is amended under section 40(7), the petition shall, for the purposes of subsection (4) of this section, be deemed to have been made on the date when such correction or amendment was made.

- (6) The registration and the certificate shall indicate—
- (a) the names of the parties to the contract and of the licensee if he is not a party;
 - (b) the date of the petition;
 - (c) the date of the registration; and
 - (d) the registration number, all of which shall be published in the *Gazette*.
- (7) No licence contract shall be valid before its registration has taken effect under this section.

Confidentiality of licence contract

43.—(1) The contents of the contract shall be confidential unless both parties to the contract agree to permit access thereto by third parties and then only to the extent of the permission granted.

(2) The Registrar shall supply copies of the contract to the Governor of the Bank of Ghana.

Remedies

44.—(1) Any appeal against a decision of the Registrar under section 40(6) of this Law may be made by the petitioner to the Secretary.

(2) An appeal against a decision of the Secretary may be made by the petitioner to the court only on the following grounds—

- (a) that the decision for refusal contains no statement of the reasons for refusal;
- (b) that none of the reasons for refusal specified in the decision is a valid reason under this Law nor was it rightly applied to the petition or to the licence contract;
- (c) that the procedure applied by the Registrar or Secretary was irregular and prejudicial to the rights of the petitioner.

**Part IX
Compulsory Licences**

Compulsory licences for non-working and similar reasons

45.—(1) At any time after four years from the filing date of an application or three years from the grant of a patent whichever period last expires, any person may, in proceedings instituted by him against the owner of the patent or in proceedings instituted against him by the said owner, request the court to grant a compulsory licence on any of the following grounds—

- (a) that a patented invention, which is capable of being worked in the country has not been so worked;
- (b) that the existing degree of working of the patented invention in the country does not meet on reasonable terms the demand for the patented product on the domestic market or for purposes of exportation;
- (c) that the working of the patented invention in the country is being hindered or prevented by the importation of the patented product; or
- (d) that, by reason of the refusal by the owner of the patent to grant licences on reasonable terms, the establishment or development of industrial or commercial activity in the country, or the possibilities of exportation from the country, are unfairly and substantially prejudiced.

(2) Where the patented invention is a process, “patented product” in subsection (1) of this section means a product obtained directly by means of the process.

(3) A compulsory licence shall not be granted in respect of a patent if the owner of the patent satisfies the court that his actions in relation to the patented invention are justifiable in the circumstances.

Compulsory licences based upon the interdependence of patents

46.—(1) Where a patented invention cannot be worked without infringing rights derived from an earlier patent, the owner of the later patent may, in proceedings instituted by him against the owner of the earlier patent or in proceedings instituted against him, request the Tribunal at any time to grant a compulsory licence with respect to the earlier patent to the extent necessary for the working of his invention if the invention—

(a) serves industrial purposes different from those served by the invention which is the subject of the earlier patent; or

(b) constitutes substantial technical progress in relation to the later invention.

(2) Where the two inventions mentioned in subsection (1) serve the same industrial purpose, a compulsory licence may be granted under that subsection only on condition that a compulsory licence shall also be granted in respect of the later patent to the owner of the earlier patent if he so requests.

(3) In this section, “earlier patent” means a patent granted on an earlier application or benefiting from an earlier validly claimed priority date, and “later patent” shall be construed accordingly.

Compulsory licences for products and processes declared to be of vital importance

47.—(1) The Secretary may by legislative instrument direct that, for patented inventions concerning certain kinds of products, or processes for the manufacture of such products declared to be of vital importance to the defence, economic or public health interests of Ghana, compulsory licences may be granted.

(2) Compulsory licences with respect to any product or process specified in subsection (1) of this section may be granted at any time after the grant of the relevant patent by the Tribunal in proceedings instituted against or by the owner of patent.

Preconditions to grant of compulsory licences

48. A compulsory licence shall not be granted unless the person requesting the compulsory licence—

(a) satisfies the Tribunal that he has asked the owner of the patent for a contractual licence but has been unable to obtain such a licence on reasonable terms and within a reasonable time; and

(b) offers guarantees satisfactory to the court to work the relevant invention sufficiently to remedy the deficiencies, or to satisfy the requirements, which gave rise to his request.

Grant and terms of compulsory licences

49.—(1) In considering a request for a compulsory licence, the court shall first decide whether a compulsory licence may be granted and, if it decides in favour of a grant, shall then proceed to determine the terms, taking into account any terms agreed by the parties.

(2) In determining the terms under subsection (1) of this section, the court shall ensure that the compulsory licence—

(a) entitles the licensee to do any act specified in section 28 of this Law, except importation, unless the application was made under section 47;

(b) does not entitle the licensee to grant further licences, without the consent of the owner of the patent;

(c) is non-exclusive; and

(d) provides for the payment to the owner of the patent of remuneration which is equitable having regard to all the circumstances of the case.

(3) The terms determined by the court shall be deemed to constitute a valid contract between the parties and shall be governed by the provisions of Part VIII of this Law.

(4) A representative of the Secretary shall have the right to appear and be heard by the court at the hearing of an application for a compulsory licence.

Transfer of compulsory licences

50. A compulsory licence may be transferred only with the industrial undertaking in which the relevant invention is used and no such transfer shall be valid except with the approval of the Tribunal.

Cancellation of compulsory licences and variation of terms

51.—(1) On the application of the owner of the patent the Tribunal may cancel a compulsory licence if—

(a) the licensee fails to comply with the terms of the licence; or

(b) the conditions which justified the grant of the licence have ceased to exist, except that in the latter case reasonable time shall be given to the licensee to cease working the relevant invention if an immediate cessation would cause him to suffer substantial damage.

(2) The Tribunal, on the application of the Secretary, shall, and on the application of the owner of the patent may, cancel the compulsory licence if, within two years from the grant of the licence the licensee has not taken the necessary steps to work the relevant invention sufficiently so as to remedy the deficiencies or satisfy the requirements which gave rise to his application for the licence.

(3) On the application of the owner of the patent or the licensee, the Tribunal may vary the terms of a compulsory licence if new facts justify the variation, and in particular, but without prejudice to the generality of the foregoing, if the owner of the patent has granted contractual licences on more favourable terms.

Registration of grant, cancellation or variation of terms of compulsory licence

52. Where the Tribunal grants, cancels or varies the terms of a compulsory licence, the Tribunal shall inform the Registrar who shall register the grant, cancellation or variation in the register.

Part X Licences of Right

Licences of right

53.—(1) The owner of a patent may request the Registrar to make an entry in the register to the effect that licences under the patent are to be available as of right.

(2) The request shall be notified by the Registrar to licensees under the patent of right.

(3) Any licensee may, within the prescribed time limit, object to the entry requested on the ground that the owner of the patent is by the relevant licence contract precluded from granting further licences.

(4) Where the Registrar receives no objection under subsection (3) of this section or considers the objections made to be unfounded, he shall make the requested entry in the register and shall publish the entry in the *Gazette*.

(5) While a patent is the subject of an entry under this section, any person may require the owner of the patent to grant him a non-exclusive licence under the patent on terms which, in the absence of agreement between the parties, shall be determined by the Tribunal.

(6) The annual fees with respect to a patent which is the subject of an entry under this section, falling due after the date of an entry shall be reduced by half.

(7) The owner of the patent may at any time request the Registrar to cancel an entry under this section, and the Registrar shall cancel the entry after payment of the balance of all annual fees which would have been payable if no entry had been made, and the Registrar shall publish the cancellation of the entry in the *Gazette*.

(8) Section 51(3) of this Law shall apply with such modification as may be necessary where the terms of a licence granted under subsection (5) of this section have been determined by the Tribunal.

(9) Licences granted under subsection (5) of this section are contractual licences within the scope of Part VIII of this Law.

Part XI
Exploitation of Patented Inventions
by Government or Third Persons Authorized by Government

Exploitation of patented inventions
by Government or third persons authorized by Government

54.—(1) Where a vital public interest, in particular, national security, health or the development of vital sectors of the national economy requires that one or more acts referred to in section 28 of this Law be performed with respect to a patented invention, the Secretary responsible for Justice may decide that the patented invention shall, even in the absence of the authorization of the owner of the patent, be exploited by a government agency or by a third person designated by the Secretary, subject to the payment of remuneration to the owner of the patent.

(2) The Secretary shall take his decision after consultation with the Patent Policy Committee, except in the case of national security, and after a hearing to which the owner of the patent and any licensee in particular shall be invited.

(3) Upon the Secretary taking the decision, the Registrar shall determine the amount of the remuneration to be paid to the owner of the patent, such remuneration being equitable have regard to all the circumstances of the case.

(4) The owner of the patent may appeal to the courts against the decision of the Registrar on the amount of the remuneration, but such an appeal shall not stay the effect of the decision referred to in subsection (1) of this section.

Part XII
Surrender, Invalidation and Revocation of Patents

Surrender of patents

55.—(1) A patent may be surrendered by its owner.

(2) The surrender may be limited to one or more claims.

(3) The surrender shall be promptly recorded in the register and published by the Registrar in the *Gazette*.

(4) Where a licence has been recorded in the register, surrender of the patent shall only be registered upon the submission of a declaration by which the licensee consents to the surrender, unless the licensee has expressly waived this right in the licence contract.

Invalidation of patent

56.—(1) Any interested person may, in proceedings instituted by him against the owner of a patent or in proceedings instituted against him by the said owner, request the court to invalidate the patent.

(2) The grounds for invalidation of a patent shall be any of the following—

(a) that any of the conditions specified in section 20(4) of this Law were not fulfilled; or

(b) that the person to whom the patent was granted had no right to the patent, provided that the patent had not been assigned to the person who has the right to the patent.

(3) Where the provisions of subsection (2) of this section apply only to some of the claims or some parts of a claim, such claims or parts of a claim shall be invalidated by the court.

(4) The court may require the owner of the patent to submit to it for the purpose of examination, publications and other documents showing the prior art which have been referred to either in connection with an application for a patent or other title of protection filed, for the same or essentially the same invention, by the owner of the patent, with any other national or regional industrial property office, or in connection with any proceedings relating to the patent or other title of protection granted upon such application.

(5) Notice of the request referred to in subsection (1) of this section shall be served on any licensee under the patent who shall be entitled to join in the proceedings in the absence of any provision to the contrary in the licence contract.

(6) Where, before or during the proceedings it is alleged or it appears to the court that the right to the patent belongs to a person who is not a party to the proceedings, notice of the request referred to in subsection (1) shall be served on that person, who shall be entitled to join in the proceedings.

Effect of invalidation

57.—(1) Any invalidated patent, or claim or part of a claim shall be regarded as null and void from the date of the grant of the patent.

(2) As soon as the decision of the court is no longer subject to appeal or if the decision goes on appeal then as soon as the appeal is disposed of and the matter is no longer subject to a further appeal, the court or the appellate court concerned, as the case may be, shall inform the Registrar of the relevant decision and he shall register it in the register and publish it as soon as possible.

Part XIII Infringement of Patents

Acts constituting infringement

58. Subject to sections 30, 32(8), 45, 47 and 54 of this Law any act specified in section 28 of this Law and performed by a person other than the owner of the patent and without the authorization of the owner of the patent, in relation to a product or a process falling within the scope of a validly granted patent, shall constitute an infringement of the patent.

Reliefs

59. On an application by the owner of the patent, the court shall grant the following reliefs—

(a) an injunction to prevent infringement where infringement is imminent, or to prohibit the continuation of the infringement, once infringement has started;

(b) damages;

(c) any other remedy provided for by law.

Declaration of non-infringement

60.—(1) Subject to subsection (3) of this section, any person with a legitimate interest may request the court to declare that the performance of any specific act does not infringe the patent.

(2) The owner of the patent and any licensee under the patent shall have the right to be joined as defendants in any such proceedings.

(3) No declaration shall be made under subsection (1) of this section—

(a) if the acts to which the request relates are already the subject of infringement proceedings; or

(b) if the person making the request is unable to prove that he has previously demanded from the owner of the patent a written acknowledgement of the lawfulness of the acts referred to and that the owner of the patent has refused such demand or has failed to reply within a reasonable time.

Threat of infringement proceedings

61.—(1) Any person threatened with infringement proceedings who proves that the acts performed or to be performed by him do not constitute an infringement of the patent may request the court to grant an injunction to prohibit such threats and to award damages for any financial loss resulting from the threats.

(2) The mere notification of the existence of a patent shall not constitute a threat within the meaning of subsection (1) of this section.

Presumption of use of patented process

62. Where a patent relates to a process for the manufacture of a product showing novel features, the production of such a product shall, in the absence of proof to the contrary, be presumed to have been manufactured by that process.

Legal proceedings by licensee

63.—(1) Any exclusive licensee within the meaning of section 37(2) of this Law may, by registered letter, request the owner of the patent to institute legal proceedings for a specific relief with respect to any infringement specified by the licensee.

(2) The licensee may, if the owner of the patent refuses or fails to institute the said proceedings within three months from the request after giving notice to the said owner, institute the proceedings in his own name.

(3) In any proceedings instituted by the licensee under subsection (2) of this section, the owner of the patent may join as a party.

(4) At any time before the end of the period of three months referred to in subsection (2) of this section, the court may, at the request of the licensee, grant an appropriate injunction to prevent infringement or prohibit the continuation of infringement where the licensee shows that immediate action is necessary to avoid substantial damage.

Part XIV Utility Certificates

Application of provisions relating to patents to utility certificates

64.—(1) Subject to section 65 of this Law, the provisions of Parts I to XIII shall apply, with such modifications as may be necessary, to utility certificates or applications for such certificates as the case may be.

(2) Where—

(a) the right to a patent conflicts with the right to a utility certificate in the case referred to in section 8(3) of this Law; or

(b) a patent and a utility certificate are interdependent within the meaning of section 46 of this Law;

the said provisions shall apply as if the word "patent" wherever it occurs, was replaced by the words "patent or utility certificate".

Special provisions relating to utility certificates

65.—(1) An invention is eligible for a utility certificate if it is new and industrially applicable.

(2) Sections 2 and 4 of this Law shall not apply in the case of inventions for which utility certificates are requested.

(3) Section 20 of this Law shall not apply in the case of applications for utility certificates.

(4) Utility certificates shall be registered in a separate part of the register.

(5) A utility certificate shall expire at the end of the seventh year after the date of the filing of the application and is not renewable.

(6) Subsections (1), (2), (3) and (5) of section 31 shall not apply in the case of utility certificates.

(7) In proceedings under section 56 of this Law, the court shall invalidate a utility certificate on any of the following grounds—

(a) that the claimed invention was not eligible for a utility certificate, having regard to subsection (1) of this section or to section 3 or sections 5 to 7;

(b) that the description or claims do not comply with the requirements prescribed by section 12(1)(a), (b) and (c) and the rules pertaining thereto;

(c) that any drawing which is necessary for the understanding of the invention has not been furnished;

(d) that the person to whom the utility certificate was granted had no right to the utility certificate, provided that the utility certificate has not been assigned to the person who has the right to the utility certificate.

(8) Section 56(2) shall not apply in the case of utility certificates.

(9) Utility certificate means a certificate granted in a case where the invention although new and useful would be considered obvious from the point of view of a person skilled in the art.

Conversion of patent applications to applications for utility certificates

66.—(1) At any time before the grant of a patent or the notification of rejection of the application or of refusal to grant a patent, an applicant for a patent may, upon payment of the prescribed fee, convert his application into an application for a utility certificate, which shall be accorded the filing date of the initial application.

(2) At any time before the grant of a utility certificate or of the notification of rejection of the application, an applicant for utility certificate may, upon payment of the prescribed fee, convert his application into a patent application which shall be accorded the filing date of the initial application.

(3) An application may not be converted under subsection (1) more than once.

Part XV
Miscellaneous Provisions

The Registrar and the register

67.—(1) There shall be a Registrar of Patents who shall, subject to the overall direction of the Secretary on policy matters, be responsible for performing all acts relating to the procedure for the grant of patents, the administration of patents granted and any other act required by this Law or regulations made thereunder or by any other law.

(2) The Registrar shall maintain a register in which shall be recorded all patents granted, numbered in the order of grant, and in respect of each patent, where appropriate, its lapse for non-payment of annual fees, and all transactions to be recorded by virtue of this Law and regulations made thereunder.

(3) The register may be consulted by any person and any person may obtain extracts therefrom under conditions prescribed by regulations.

(4) The office of the Registrar shall provide such patent information service to the public as may from time to time be prescribed.

(5) The Registrar may, subject to the provisions of this Law and regulations made thereunder, issue administrative instructions relating to the procedure for the grant of patent and administration of patents granted as well as to other functions of his office.

(6) No patent application may be filed by, and no patent may be granted to, and no rights relating to patents may be held by any employee of the Registrar's office.

(7) An employee of the Registrar's office shall not communicate information which by its nature is a professional secret which is obtained by him in the course of his employment to persons not entitled to receive it and shall not disclose such information or make other use of it at any time even after the termination of his employment.

Inspection of files

68.—(1) Subject to subsection (2) of this section the files relating to proceedings before the Registrar's office under this Law and regulations thereunder may be inspected by any person on request, and copies of extracts therefrom shall be furnished upon payment of the prescribed fee.

(2) The files relating to patent applications shall be made available for inspection before the grant of the patent only with the consent of the applicant.

(3) Prior to the grant of the patent, the Registrar's office may disclose any of the following bibliographical data—

(a) the name of the applicant;

(b) the number of the application;

(c) the date and number of the filing of the application and, if priority is claimed, the date and number of the earlier application;

(d) the title of the invention.

Patent Policy Committee

69.—(1) There is hereby established a committee known as the Patent Policy Committee which shall be responsible for advising the Secretary on all matters of policy relating to patents and utility certificates and for performing such other functions required of it by this Law or any other enactment.

(2) The Committee shall consist of the following persons who shall be appointed by the Council—

(a) the Executive Chairman of the Council for Scientific and Industrial Research, who shall be Chairman;

(b) the Registrar;

- (c) a representative of the universities in Ghana;
- (d) a representative of the Ghana Manufacturers' Association;
- (e) a representative of the Ghana Chamber of Commerce;
- (f) a representative of the Trade Union Congress;
- (g) (i) a lawyer; and

(ii) an economist (both with knowledge of patents nominated by the Secretary).

- (h) a representative of a consumer association nominated by the Secretary.

Patents Tribunal

70.—(1) There is hereby established a tribunal known as the Patent Tribunal which shall be responsible for performing such functions as are specified in this Law or any other enactment.

(2) The Tribunal shall consist of a Chairman who shall be a High Court Judge appointed by the Council in consultation with the Chief Justice, and two other persons appointed by the Council, one of whom shall be a qualified scientist or technologist and the other a qualified economist.

(3) An appeal from a decision of the Tribunal shall lie on a question of law or mixed law and fact to the Court of Appeal.

Court of competent jurisdiction

71.—(1) Subject to the provisions of section 70 disputes relating to the application of this enactment and matters which under this enactment are to be referred to the court shall be brought before the High Court.

(2) The court hearing proceedings under the enactment may sit with and be advised by two assessors having expert knowledge of matters of a technological or economic nature.

(3) The Rules of Court Committee may make such rules for the purposes of proceedings under this enactment as are necessary to supplement the rules applicable to proceedings in the High Court.

Penalty for intentional infringement

72. Any intentional infringement of a patent or utility certificate shall constitute an offence punishable by a fine of not more than 2 million cedis or by imprisonment of not more than two years or both.

Interpretation

73. In this Law, unless the context otherwise requires—

“application” means an application for the grant of a patent under this Law and subject to section 24(2) includes international applications referred to in Part IV of this Law;

“Council” means the Provisional National Defence Council;

“court” means the High Court;

“foreign application” means an application for a patent or another title of protection filed by an applicant with a national industrial property office of another country or with a regional industrial property office;

“International Bureau” means the International Bureau of the World Intellectual Property Organization established by a convention signed at Stockholm on 14th July, 1967;

“licensee” except in Part VIII of this Law, means a licensee under a contract registered or deemed to have been registered under section 42 of this Law;

“Paris Convention” means the Paris Convention for the Protection of Industrial Property of 20th March, 1883, as last revised;

“Patent Cooperation Treaty” means the treaty of that name signed in Washington on 19th June, 1970;

“Patent Policy Committee” means the committee established under section 69 of this Law;

“prescribed” means prescribed by regulation made under section 74 of this Law;

“register” means the register referred to in section 67(2) of this Law;

“Registrar” means the Registrar of Patents appointed under section 67(1) of this Law;

“Secretary” means P.N.D.C. Secretary responsible for Justice;

“Tribunal” means the Patents Tribunal established under section 70 of this Law;

the expression “to work” shall be construed in accordance with section 31(4) of this Law.

Power to make regulations

74. The Secretary may by legislative instrument make regulations prescribing anything that is to be prescribed under this Law or generally for giving effect to the provisions of this Law, and in particular and without prejudice to the foregoing, prescribing—

(a) the details with which an application must comply;

(b) the qualifications required of an agent of an applicant;

(c) provisions relating to compliance with the requirement of unity of invention under section 13 of this Law;

(d) the details of the requirements relating to a claim to priority under section 15 of this Law;

(e) the details of the requirements relating to the furnishing of information concerning corresponding foreign applications and grant under section 16 of this Law;

(f) the details of the requirements and procedure on the filing and examination of applications under sections 18 and 20 of this Law;

(g) the details of the requirements and procedure for the international-type search under section 19 of this Law;

(h) the manner of publication of a patent grant;

(i) details of the functions to be performed by the Registrar’s office generally and in accordance with the provisions of the Patent Cooperation Treaty, and concerning the maintenance of and access to the register;

(j) the details of the requirements and procedure for converting a patent application into an application for a utility certificate and vice versa under section 66 of this Law;

(k) the details relating to the inspection of files under section 68 of this Law;

(l) such matters as are necessary for the proper functioning of the Patent Policy Committee set up under this Law;

(m) the procedure and such matters as are necessary for the proper functioning of the Patents Tribunal set up under this Law;

(n) the fees for any act for which payment is required under this Law.

Transitional and saving provisions

75.—(1) Where a patent has been registered in the country under the Patent Registration Ordinance (Cap. 179) and the privileges and rights conferred by the registration were effective immediately before the commencement of this Law then—

(a) the patent shall be treated as if it had been registered under this Law;

(b) the patent shall expire as regards Ghana when those privileges and rights would have expired if this Law had not been passed;

(c) the patent may be invalidated only where those privileges and rights could have been declared as not having been acquired in the country if this Law had not been passed;

(d) the certificate of registration, or a certified copy thereof, shall be admissible as *prima facie* evidence of the date and fact of registration; and

(e) an action for infringement shall lie under this Law only if the alleged infringement occurred on or after the commencement of this Law and in any other case may be instituted and disposed of as if this Law had not been made.

(2) So far as is necessary for the purposes of subsection (1) of this section, the register of patents under the Ordinance shall be maintained as nearly as may be, and shall be regarded and dealt with, as if it were part of the register under this Law.

(3) Section 33(1) and Part VIII of this Law shall apply to a licence contract within the meaning of section 35 or to a contract assigning the right of a patent or assigning an application or a patent provided that the said contract was concluded before the commencement of this Law and is submitted for registration to the Registrar within six months from the commencement of this Law.

(4) Within 12 months from the commencement of this Law, the Secretary may by legislative instrument make any further transitional or saving provisions, not inconsistent with this section, which appear to him to be necessary or desirable.

Repeals

76. The Patent Registration Ordinance (Cap. 179) and the Patent Registration (Amendment) Decree, 1972 (N.R.C.D. 81) are hereby repealed.

Commencement

77. This Law shall come into force six months after its promulgation.

* *English title.*

Entry into force: June 18, 1993.

Source: Communication from the Ghanaian authorities.