

THE BURMA PATENTS AND DESIGNS ACT, 1945.**CONTENTS.***Preliminary.*

1. Short title and commencement.
2. Definitions.

PART I.**PATENTS.***Application for and grant of Patent.*

3. Application.
4. Specifications.
5. Time for leaving complete specification.
6. Provisional protection.
7. Proceedings upon application.
8. Advertisement on acceptance of application.
9. Effect of acceptance of application.
10. Opposition to grant of patent.
11. Grant and sealing of patent.
12. Date of patent.
13. Effect, extent and form of patent.
14. Fraudulent applications for patents.
15. Single patent for cognate inventions.

Term of Patent.

16. Term of patent.
17. Protection of patents registered before the commencement of this Act.
18. Extension of term of patent.
19. Patents of addition.
20. Restoration of lapsed patent.

Amendment of application or specification.

21. Amendment of application or specification by Controller.
22. Amendment of specification by the Court.
23. Restriction on recovery of damages.

Register of Patents.

24. Register of Patents.
25. Patent to bind the Government.
26. Assignment of patent to the State.

Compulsory Licences and Revocation.

27. Compulsory licences and revocation.
28. Revocation of patents worked outside the Union of Burma.
29. Effect on patents granted before the commencement of this Act.
30. Operation of order under section 27 or section 28.
31. Power of Controller to revoke surrendered patent.
32. Revocation of patent on public grounds.

Legal proceedings.

33. Petition for revocation of patent.
34. Notice of proceedings to persons interested.
35. Framing issue for trial before District Court.
36. Suits for infringement of patents.
37. Exemption of innocent infringer from liability for damages.
38. Reliefs in suit for infringement.
39. Certificate of validity questioned and costs thereon.
40. Transmission of decrees and orders to the Controller.
41. Hearing with assessor.
42. Grant of relief in respect of particular claims.
43. Remedy in case of groundless threats of legal proceedings.

Miscellaneous.

44. Grant of patents to two or more persons.
45. Public use or knowledge of invention.
46. Disconformity.
47. Loss or destruction of patent.
48. Provisions as to exhibitions and readings before learned societies.
49. Special provisions as to vessels, air-craft and land vehicles.

PART II.

DESIGNS.

Registration of Designs.

50. Application for registration of designs.
51. Registration of designs in new classes.
52. Certificate of registration.
53. Register of Designs.

Copyright in Registered Designs.

54. Copyright on registration.
55. Requirements before delivery on sale.
56. Effect of disclosure on copyright.
57. Inspection of registered designs.
58. Information as to existence of copyright.
59. Cancellation of registration.
60. Registration of design to bind the Government.

Industrial and International Exhibitions.

61. Provisions as to exhibitions.

Legal Proceedings.

62. Piracy of registered design.
63. Application to designs of certain provisions of the Act as to patents.
64. Protection in Burma of designs registered before the commencement of this Act.

PART III.**GENERAL.***Patent Office and proceedings thereat.*

65. Controller of Patents and Designs and his establishment.
66. Patent Office.

Fees.

67. Fees.

Provisions as to Registers and other Documents in the Patent Office.

68. Notice of, trust not to be entered in registers.
69. Inspection of, and extracts from registers.
70. Information relating to patents.
71. Privilege of reports of or to the Controller.
72. Prohibition of publication of specification, drawings, etc., where application abandoned, etc.
73. Power of Controller to correct clerical errors.
74. Registration of assignments and transmissions.
75. Rectification of register.

Powers and Duties of Controller.

76. Powers of Controller in proceedings under Act.
77. Publication of patented inventions.
78. Exercise of discretionary power by Controller.
79. Power of Controller to take directions of President.
80. Refusal to grant patent, etc., in certain cases.
81. Appeals to the President.

Evidence, etc.

82. Certificate of Controller to be evidence.
83. Evidence before the Controller.
84. Evidence of documents in Patent Office.
85. Transmission of copies of specifications, etc., and inspections thereof.
86. Applications and notices by post.
87. Declaration by person under disability.
88. Security for costs.

Agency.

- 89. Subscription and verification of certain documents.
- 90. Agency.

Powers, etc., of the President of the Union.

- 91. Power of President to make rules.

Offences.

- 92. Wrongful use of words "Patent Office."

Reciprocal arrangement with His Britannic Majesty's possessions or with India or Pakistan or any State in India or Pakistan.

- 93. Reciprocal arrangements with His Britannic Majesty's possessions or with India or Pakistan or any State in India or Pakistan.

94-95. * * * *

Schedule.

THE BURMA PATENTS AND DESIGNS ACT, 1945.*

[BURMA ACT V, 1945.]

WHEREAS it is expedient to make legislative provision for the protection of inventions and designs ;

* * * *

It is hereby enacted as follows :—

PRELIMINARY.

- 1. (1) This Act may be called the Burma Patents and Designs Act, 1945. Short title and commencement.
- (2) It shall come into force on such date as the President of the Union may, by notification, direct.

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

- (1) "article" means (as respects designs) any article of manufacture and any substance, artificial or natural, or partly artificial and partly natural ;
- (2) "Controller" means the Controller of Patents and Designs appointed under this Act ;
- (3) "copyright" means the exclusive right to apply a design to any article in any class in which the design is registered ;
- (4) "design" means only the features of shape, configuration, pattern or ornament applied to any article by any industrial

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process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction, or anything which is in substance a mere mechanical device, and does not include any trade mark, as defined in section 478, or property mark, as defined in section 479, of the Penal Code;

- (5) "District Court" includes the High Court in the exercise of its ordinary original civil jurisdiction;
- (6) "High Court" means the [High Court]¹;
- (7) "invention" means any manner of new manufacture and includes an improvement and an alleged invention;
- (8) "legal representative" means a person who in law represents the estate of a deceased person;
- (9) "manufacture" includes any art, process or manner of producing, preparing or making an article, and also any article prepared or produced by manufacture;
- (10) "patent" means a patent granted under the provisions of this Act;
- (11) "patentee" means the person for the time being entered on the register of patents kept under this Act as the grantee or proprietor of the patent;
- (12) "prescribed" means prescribed by rules under this Act;
- (13) "proprietor of a new or original design"—
 - (a) where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed, and
 - (b) where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right is so acquired, the person by whom the design or right is so acquired, and
 - (c) in any other case, means the author of the design; and where the property in, or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person.

PART I.

PATENTS.

Application for and Grant of Patent.

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

¹ Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

(2) The application shall be made in the prescribed form, and shall be left at the Patent Office in the prescribed manner.

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

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

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

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

(3) A specification, whether provisional or complete, must commence with the title, and in the case of a complete specification must end with a distinct statement, of the inventions claimed.

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

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

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

5. (1) If the applicant does not leave a complete specification with his application, he may leave it at any subsequent time within nine months from the date of the application : Time for
leaving
complete
specification.

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

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

Provisional
protection.

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

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

Proceedings
upon
application.

7. (1) The Controller shall refer to an Examiner every application in respect of which a complete specification has been filed and if satisfied on the report of the Examiner that,

- (a) the nature of the invention or the manner in which it is to be performed is not particularly described and ascertained in the complete specification, or
- (b) the application, specification and drawings have not been prepared in the prescribed manner, or
- (c) the title of the specification does not sufficiently indicate the subject-matter of the invention, or
- (d) the statement of claim does not sufficiently define the invention, or
- (e) where a complete specification has been left after a provisional specification, the invention particularly described in the complete specification is not substantially the same as that which is described in the provisional specification, or
- (f) the invention as described and claimed is *prima facie* not a manner of new manufacture or improvement, or
- (g) the specification relates to more than one invention, or
- (h) in the case of an application claiming priority under section 93, the specification describes and claims an invention substantially larger than or substantially different from the invention disclosed in the specification filed with the application made outside the Union of Burma by virtue of which priority is claimed, or
- (i) in the case of an application for a patent of addition under section 19, the invention described and claimed in the specification is not an improvement or modification of that described and claimed in the original specification,

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

Provided that, when a specification comprises more than one invention, the application shall, if the Controller or the applicant so requires, be restricted to one invention and the other inventions may be made the subject-matter of

fresh applications ; and any such fresh application shall be proceeded with as a substantive application, but the Controller may, in his discretion, direct that any such fresh application made before the acceptance of the original application shall bear the date of the original application or such later date as he may fix, and the fresh application shall be deemed, for the purposes of this Act, to have been made on the date which it bears in accordance with such direction :

Provided further that where a complete specification is left after a provisional specification, the Controller may, if the applicant so requests, cancel the provisional specification and direct that the application shall be deemed to have been made on the date on which the complete specification was left, and proceed with the application accordingly.

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

(3) Where the Controller refuses to accept an application or requires an amendment or the insertion of a reference the applicant may appeal from his decision to the President of the Union.

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

(5) Unless an application is accepted within eighteen months from the date of the application, the application shall (except where an appeal has been lodged) be deemed to have been refused: Provided that where, before or within three months after the expiration of the said period of eighteen months, a request is made to the Controller for an extension of time the application shall, on payment of the prescribed fee, be continued for any period so requested not exceeding in all three months from the expiration of the said period of eighteen months.

8. On the acceptance of an application the Controller shall give notice thereof to the applicant and shall advertise the acceptance in the manner prescribed ; and the application and specifications with the drawings (if any) shall be open to public inspection.

Advertise-
ment on
acceptance of
application.

9. After the acceptance of an application and until the date of sealing a patent in respect thereof, or the expiration of the time for sealing, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the acceptance of the application :

Effect of
acceptance
of applica-
tion.

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

Opposition
to grant of
Patent.

10. (1) Any person may, on payment of the prescribed fee, at any time within ninety days from the date of the advertisement of the acceptance of an application, give notice at the Patent Office of opposition to the grant of the patent on any of the following grounds, namely—

- (a) that the applicant obtained the invention from him, or from a person of whom he is the legal representative or assign ; or
- (b) that the invention has been claimed in any specification filed in the Union of Burma which is or will be of prior date to the patent, the grant of which is opposed ; or
- (c) that the nature of the invention or the manner in which it is to be performed is not sufficiently or fairly described and ascertained in the specifications ; or
- (d) that the invention has been publicly used in any part of the Union of Burma or has been made publicly known in any part of the Union of Burma ; or
- (e) that the complete specification describes or claims an invention other than that described in the provisional specification, and that such other invention either forms the subject of an application made by the opponent for a patent which if granted would bear a date in the interval between the date of the application and the leaving of the complete specification, or has been made available to the public by publication in any document published in the Union of Burma in that interval ; but on no other ground.

(2) Where such notice is given, the Controller shall give notice of the opposition to the applicant, and shall, on the expiration of the period of ninety days mentioned in sub-section (1), after hearing the applicant and the opponent, if desirous of being heard, decide on the case.

(3) The decision of the Controller shall be subject to appeal to the President of the Union.

Grant and
sealing of
Patent.

11. (1) If there is no opposition, or, in the case of opposition, if the determination is in favour of the grant of a patent, a patent shall, on payment of the prescribed fee, be granted, subject to such conditions (if any) as the President of the Union thinks expedient, to the applicant, or in the case of a joint application to the applicants jointly, and the Controller shall cause the patent to be sealed with the seal of the Patent Office.

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

- (a) an applicant has agreed in writing that on the grant to him of a patent he will assign it to another party or to a joint applicant and refuses to proceed with the application, or
- (b) disputes arise between joint applicants as to proceeding with an application,

the Controller, if he is satisfied of the existence of such agreement or that any joint applicant or applicants ought to be allowed to proceed alone, may

direct that such other party or joint applicant or applicants may proceed with the application accordingly and may grant a patent to him or them, as the case may be :

Provided that—

- (i) the Controller shall not give any such direction until every party interested has had an opportunity of being heard by him, and
- (ii) an appeal from any such direction shall lie to the President of the Union.

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

Provided that—

- (a) where the Controller has allowed extension of the time within which an application may be accepted, a further extension of four months after the said twenty-four months shall be allowed for the sealing of the patent ;
- (b) where the sealing is delayed by an appeal to the President of the Union or by opposition to the grant of the patent or by any proceedings taken for obtaining a direction of the Controller under the provisions of sub-section (2), the patent may be sealed at such time as the Controller may direct ;
- (c) where the patent is granted to the legal representative of an applicant who has died before the expiration of the time which would otherwise be allowed for sealing the patent, the patent may be sealed at any time within twelve months after the date of his death or at such later time as the Controller may think fit ;
- (d) where for any reason a patent cannot be sealed within the period allowed by any of the foregoing provisions of this section, that period may, on payment of the prescribed fee and on compliance with the prescribed conditions, be extended to the extent applied for but not exceeding three months.

12. Except as otherwise expressly provided by this Act, a patent shall be dated and sealed as of the date of the application : Provided that no proceedings shall be taken in respect of an infringement committed before the advertisement of the acceptance of the application.

Date of Patent.

13. (1) A patent sealed with the seal of the Patent Office, shall, subject to the other provisions of this Act, confer on the patentee the exclusive privilege of making, selling and using the invention throughout the Union of Burma and of authorizing others so to do.

Effect, extent and form of Patent.

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

Fraudulent
applications
for Patents.

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

(2) Where a patent has been revoked by the High Court on the ground that it has been obtained in fraud of the true and first inventor, or where the grant of a patent has been refused by the Controller under section 10 on the ground stated in clause (a) of sub-section (1) of that section, the Controller may, on the application of the true inventor or his legal representative or assign made in accordance with the provisions of this Act, grant to him a patent for the whole or any part of the invention, and the patent so granted shall bear the same date as the patent so revoked or, in the case of a patent the grant of which has been refused, the same date as would have been borne by the patent if it had been granted : Provided that no suit shall be brought for any infringement of the patent so granted committed before the actual date when such patent was granted.

Single Patent
for cognate
inventions.

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

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

Term of Patent.

Term of
Patent.

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

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

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

(3) If any proceeding is taken in respect of an infringement of the patent committed after a failure to pay any fee within the prescribed time, an

before any enlargement thereof, the Court before which the proceeding is taken may, if it thinks fit, refuse to award any damages in respect of such infringement.

India II, 1911.
Burma VI, 1939.
India II, 1911.

17. Notwithstanding anything to the contrary in this Act, any right to or interest in any patent acquired or continued in the Union of Burma under the Indian Patents and Designs Act, 1911, read with the India and Burma (Transitory Provisions) Order, 1937, and the Burma Patents and Designs Act, 1939, as subsequently amended or continued, shall continue to be valid in the Union of Burma throughout the whole period of the validity of the patent in India or Pakistan, including such extension (if any) as may be granted under the provisions of section 15 of the Indian Patents and Designs Act, 1911.

Protection of Patents registered before the commencement of this Act.

18. (1) A patentee may present a petition to the President of the Union praying that his patent may be extended for a further term: such petition shall be left at the Patent Office at least six months before the time limited for the expiration of the patent and shall be accompanied by the prescribed fee and must be advertised by the petitioner within the prescribed time and in the prescribed manner.

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

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

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

(5) The President of the Union or the High Court, as the case may be, shall in considering the petition have regard to the nature and merits of the invention in relation to the public, to the profits made on the patent, and to all the circumstances of the case.

(6) If it appears to the President of the Union or to the High Court, as the case may be, that the patent has not been sufficiently remunerative, the President of the Union or the High Court, as the case may be, may by order extend the term of the patent for a further term not exceeding five or, in exceptional cases, ten years, or may order the grant of a new patent for such term not exceeding ten years as may be specified in the order and subject to any restriction, conditions and provisions which the President of the Union or the High Court, as the case may be, may think fit: Provided that any patent so extended or granted shall, notwithstanding anything therein or in this Act, cease if the inventor fails to pay before the expiration of each year the prescribed fee.

19. (1) Where a patent for an invention has been applied for or granted and the applicant or the patentee, as the case may be, applies for a further

Extension of term of Patent.

Patents of addition.

patent in respect of any improvement in or modification of the invention, he may in his application for the further patent request that the term limited in that patent for the duration thereof be the same as that of the original patent or so much of that term as is unexpired, and, if he does so, a patent (hereinafter referred to as a patent of addition) may be granted for such term as aforesaid.

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

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

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

**Restoration
of lapsed
Patent.**

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

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

(3) If it appears from such statement that the omission was unintentional or unavoidable and that no undue delay has occurred in the making of the application, the Controller shall advertise the application in the prescribed manner, and at any time within sixty days of the date of the advertisement any person may give notice of opposition at the Patent Office.

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

(5) After the expiration of the said period of sixty days the Controller shall hear the case and shall issue an order either restoring the patent subject to any conditions and restrictions deemed to be advisable or dismissing the application:

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

(6) An appeal shall lie from the decision of the Controller under this section to the President of the Union.

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

Amendment of application or specification by Controller.

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

(3) In any other case the request and the nature of the proposed amendment shall be advertised in the prescribed manner, and at any time within ninety days from the date of the advertisement any person may give notice at the Patent Office of opposition to the amendment.

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

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

(6) The decision of the Controller in either case shall be subject to an appeal to the President of the Union.

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

(8) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall be advertised in the prescribed manner, and shall in all Courts and for all purposes be deemed to form part of the application or specification.

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

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

Amendment of specification by the Court.

Provided that no amendment shall be so allowed that would make the specification, as amended, claim an invention substantially larger than or substantially different from, the invention claimed by the specification as it stood before the amendment; and where an application for such an order is made to the Court notice of the application shall be given to the Controller, and the Controller shall have the right to appear and be heard.

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

Restriction on recovery of damages.

allowing the amendment unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge.

Register of Patents.

Register of
Patents.

24. (1) There shall be kept at the Patent Office a book called the Register of Patents wherein shall be entered the names and addresses of grantees of patents, notifications of assignments and of transmissions of patents, of licences under patents, and of amendments, extensions, and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may be prescribed.

(2) The register of patents shall be *prima facie* evidence of any matter by this Act directed or authorized to be inserted therein.

(3) Copies of deeds, licences and any other documents affecting the proprietorship in any patent or in any licence thereunder shall be supplied to the Controller in the prescribed manner for filing in the Patent Office.

Government.

Patent to
bind the
Government.

25. (1) Subject to the other provisions of this section, a patent shall have to all intents the like effect as against the Government as it has against a subject.

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

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

(4) In the event of any dispute as to the making, use or exercise of an invention under this section, or the terms therefor, or as to the existence or scope of any record or trial as aforesaid, the matter shall be referred to the High Court for decision, which shall have power to refer the whole matter or any question or issue of fact arising thereon to be tried before a special or official referee or an arbitrator upon such terms as it may direct. The Court, referee or arbitrator, as the case may be, may, with the consent of the parties, take into consideration the validity of the patent for the purposes only of the reference and for the determination of the issues between the applicant or patentee and such officers or authorities. The Court, referee or arbitrator, in settling the terms as aforesaid, shall also be entitled to take into consideration any benefit or compensation which the applicant or patentee, or any other person interested in the patent, may have received directly or indirectly from the Government or from such officers or authorities in respect of such patent: Provided that, if the inventor or patentee is a servant of the Government and the subject-matter of the invention is certified by the President of the Union to be connected with work done in the course of such service, any such dispute shall be settled by the President of the Union after hearing the applicant or patentee and any other person having an interest in the invention or patent.

(5) The right to use an invention for the services of the Government under the provisions of this section shall include the power to sell any articles made in pursuance of such right which are no longer required for the services of the Government.

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

26. (1) The inventor of any improvement in instruments or munitions of war may (either for or without valuable consideration) assign to the [State]¹ all the benefit of the invention and of any patent obtained or to be obtained for the invention; and the President of the Union may be a party to the assignment.

Assignment
of Patent to
the State.

(2) The assignment shall effectually vest the benefit of the invention and patent in the [State]¹ and all covenants and agreements therein contained for keeping the invention secret and otherwise shall be valid and effectual, notwithstanding any want of valuable consideration, and may be enforced accordingly by or on behalf of the President of the Union.

(3) Where any such assignment has been made, the President of the Union may, at any time before the publication of the specification, certify to the Controller that, in the interest of the public service, the particulars of the invention and of the manner in which it is to be performed should be kept secret.

(4) If the President of the Union so certifies, the application and specifications, with the drawings (if any), and any amendment of the

¹ Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

specification and any copies of such documents and drawings, shall, instead of being left in the ordinary manner at the Patent Office, be delivered to the Controller in a packet sealed by authority of the President of the Union.

(5) The packet shall, until the expiration of the term during which a patent for the invention may be in force, be kept sealed by the Controller, and shall not be opened save under the authority of an order of the President of the Union.

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

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

(8) Where the President of the Union certifies as aforesaid after an application for a patent has been left at the Patent Office but before the publication of the specification the application and specifications, with the drawings (if any), shall be forthwith placed in a packet sealed by authority of the Controller, and the packet shall be subject to the foregoing provisions respecting a packet sealed by authority of the President of the Union.

(9) No proceeding by petition or otherwise shall lie for revocation of a patent granted for an invention in relation to which a certificate has been given by the President of the Union as aforesaid.

(10) No copy of any specification or other document or drawing by this section required to be placed in a sealed packet, shall in any manner whatever be published or open to the inspection of the public, but save as otherwise provided in this section, the provisions of this Act shall apply in respect of any such invention and patent as aforesaid.

(11) The President of the Union may at any time waive the benefit of this section with respect to any particular invention, and the specifications, documents and drawings shall be thenceforth kept and dealt with in the ordinary way.

(12) The communication of any invention for any improvement in instruments or munitions of war to the President of the Union, or to any person or persons authorized by the President of the Union to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed use or publication of such invention so as to prejudice the grant of validity of any patent for the same.

(13) Rules may be made by the President of the Union for the purpose of ensuring secrecy with respect to patents to which this section applies, and such rules may modify any of the provisions of this Act in their application to such patents as aforesaid so far as may appear necessary for the purpose aforesaid.

Compulsory Licences and Revocation.

**Compulsory
licences and
revocation.**

27. (1) Any person interested may present a petition to the President of the Union, which shall be left at the Patent Office together with the prescribed fee, alleging that the demand for a patented article in the Union of Burma is

not being met to an adequate extent and on reasonable terms, and praying for the grant of a compulsory licence or, in the alternative, for the revocation of the patent.

(2) The President of the Union shall consider the petition, and if the parties do not come to an arrangement between themselves the President of the Union may, as he think fit, either dispose of the petition himself or refer it to the High Court for decision.

(3) The provision of sub-section (4) of section 18, prescribing the procedure to be followed in the case of references to the High Court under that section, shall apply in the case of references made to the High Court under this section.

(4) If the President of the Union is of opinion, or, where a reference has been made under sub-section (2) to the High Court, that Court finds that the demand for the patented article in the Union of Burma is not being met to an adequate extent and on reasonable terms, the patentee may be ordered to grant licences on such terms as the President of the Union or the High Court, as the case may be, may think just, or, if the President of the Union or the High Court is of opinion that the demand will not be adequately met by the grant of licences, the patent may be revoked by order of the President of the Union or the High Court : Provided that an order of revocation shall not be made before the expiration of four years from the date of the patent or if the patentee gives satisfactory reasons for his default.

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

- (a) if by reason of the default of the patentee to manufacture to an adequate extent and supply on reasonable terms the patented article, or any parts thereof which are necessary for its efficient working or to carry on the patented process to an adequate extent or to grant licences on reasonable terms, any existing trade or industry or the establishment of any new trade or industry in the Union of Burma is unfairly prejudiced, or
- (b) if any trade or industry in the Union of Burma is unfairly prejudiced by the conditions attached by the patentee to the purchase, hire or use of the patented article or to the using or working of the patented process.

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

Revocation
of patents
worked out-
side the
Union of
Burma.

(2) The President of the Union shall consider the application and if after inquiry he is satisfied—

- (a) that the allegations contained therein are correct, and
- (b) that the applicant is prepared, and is in a position to manufacture or carry on the patented article or process in the Union of Burma and

(c) that the patentee refuses to grant a licence on reasonable terms, then, subject to the provisions of this section and unless the patentee proves that the patented article or process is manufactured or carried on to an adequate extent in the Union of Burma or gives satisfactory reasons why the article or process is not so manufactured or carried on, the President of the Union may make an order—

- (a) revoking the patent either forthwith, or after such reasonable interval as may be specified in the order, unless in the meantime it is shown to his satisfaction that the patented article or process is manufactured or carried on within the Union of Burma to an adequate extent, or
- (b) ordering the patentee to grant a licence to the applicant, which may be a licence exclusive to him or otherwise as the President of the Union may direct.

(3) No order revoking a patent or ordering the grant of a licence shall be made under sub-section (2) which is at variance with any treaty, convention, arrangement or engagement with any British possession or foreign country.

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

Effect on
Patents
granted
before the
commence-
ment of this
Act.

29. The provisions of sections 27 and 28 shall have the same effect in the case of rights continued by the provisions of section 17 as in the case of patents granted under this Act.

Operation
of order
under sec-
tion 27 or
section 28.

30. An order of the High Court under section 27 or of the President of the Union under section 27 or section 28, directing the grant of any licence, shall, without prejudice to any other method of enforcement operate as if it were embodied in an instrument granting a licence and executed by the patentee and all other necessary parties.

Power of
Controller
to revoke
surrendered
Patent.

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

Revocation
of Patent
on public
grounds.

32. A patent shall be deemed to be revoked if the President of the Union declares, by notification, the patent or the mode in which it is exercised to be mischievous to the State or generally prejudicial to the public.

Legal Proceedings.

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

Petition for
revocation
of Patent.

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

provisional specification, was not new at the date when the complete specification was filed :

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

- (i) in clause (b), subject to the provisions of section 93, or
- (ii) in clause (d), subject to the provisions of sub-section (1) of section 14, sub-section (12) of section 26, section 45 and section 48.

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

- (a) by the [Attorney-General]¹ or any person authorized by him ; or
- (b) by any person alleging—

- (i) that the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims ; or
- (ii) that he, or any person under or through whom he claims, was the true and first inventor of any invention included in the claim of the patentee ; or
- (iii) that he, or any person under or through whom he claims an interest in any trade, business or manufacture, had publicly manufactured, used or sold, within the Union of Burma, before the date of the patent, anything claimed by the patentee as his invention.

(3) The High Court may, irrespective of any provisions of the Code of Civil Procedure in this behalf, require any person other than the [Attorney-General]¹ or any person authorized by him, applying for the revocation of a patent to give security for the payment of all costs incurred or likely to be incurred by any person appearing to oppose the petition.

Notice of
proceedings
to persons
interested.

34. (1) Notice of any petition for revocation of a patent under section 33 shall be served on all persons appearing from the register to be proprietors of that patent or to have shares or interests therein, and it shall not be necessary to serve the notice on any other person.

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

Framing
issue for trial
before
District
Court.

35. (1) The High Court may, if it thinks fit, direct an issue for the trial, before itself or any District Court, of any question arising upon a petition to itself under section 33 and the issue shall be tried accordingly.

(2) If the issue is directed to a District Court the finding of the Court shall not be subject to appeal, but the evidence taken upon the trial shall be recorded and a copy thereof, certified by the Judge of the Court, shall be transmitted, together with any remarks which he may think fit to make

¹ Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

thereon, to the High Court, and the High Court may thereupon act upon the finding of the District Court or dispose of the petition upon the evidence recorded, or direct a new trial, as the justice of the case may require.

36. (1) A patentee may institute a suit in the District Court having jurisdiction to try the suit against any person who during the continuance of a patent acquired by him under this Act in respect of an invention, makes, sells or uses the invention without his licence, or counterfeits it, or imitates it : provided that where a counter-claim for revocation of the patent is made by the defendant, the suit, along with the counter-claim, shall be transferred to the High Court for decision.

Suits for infringement of Patents.

(2) Every ground on which a patent may be revoked under section 33 shall be available by way of defence to a suit for infringement.

37. A plaintiff shall not be entitled to recover any damages in respect of any infringement of a patent from any defendant who proves that at the date of the infringement he was not aware, nor had reasonable means of making himself aware, of the existence of the patent, and the making of an article, with the word "patent", "patented", or any word or words expressing or implying that a patent has been obtained for the article, stamped, engraved, impressed on or otherwise applied to the article, shall not be deemed to constitute notice of the existence of the patent unless the word or words are accompanied by the year and number of the patent : provided that nothing in this section shall affect any proceedings for an injunction.

Exemption of innocent infringer from liability for damages.

38. In a suit for infringement of a patent the plaintiff shall be entitled to relief by way of injunction and damages but not to an account of profits, but subject as aforesaid the Court may, on the application of either party, make such order for an injunction or inspection of accounts, and impose such terms and give such directions respecting the same and proceedings thereon as the Court may see fit.

Reliefs in suit for infringement.

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

Certificate of validity questioned and costs thereon.

40. A Court making a decree in a suit under section 36 or an order on a petition under section 33 shall send a copy of the decree or order, as the case may be, to the Controller who shall cause an entry thereof and reference thereto to be made in the Register of Patents.

Transmission of decrees and orders to the Controller.

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

Hearing with assessor.

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

(3) The remuneration, if any, to be paid to an assessor under this section shall be determined by the Court and shall be deposited in Court by such party or parties as the Court may direct, and shall form part of the costs of the proceedings.

Grant of relief in respect of particular claims.

42. Notwithstanding anything contained in section 23, if the Court in any action for infringement of a patent finds that any one or more of the claims in the specification, in respect of which infringement is alleged, are valid, it may, subject to its discretion as to costs and as to the date from which damages should be reckoned and to such terms as to amendment as it may deem desirable, grant relief in respect of any of such claims which are infringed without regard to the invalidity of any other claim in the specification. In exercising such discretion the Court may take into consideration the conduct of the parties in inserting such invalid claims in the specification or permitting them to remain there.

Remedy in case of groundless threats of legal proceedings.

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

Miscellaneous.

Grant of Patents to two or more persons.

44. Where a patent is granted to two or more persons jointly, they shall, unless otherwise specified in the patent, be treated for the purpose of the devolution of the legal interest therein as co-owners with equal rights thereto, but, subject to any contract to the contrary, each of such persons shall be entitled to use the invention for his own profit without accounting to the others, but shall not be entitled to grant a licence without their consent, and, if any such person dies, his beneficial interest in the patent shall devolve on his legal representatives.

Public use or knowledge of invention.

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

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

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

47. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the Controller, the Controller may at any time, on payment of the prescribed fee, seal a duplicate thereof. Loss or destruction of Patent.

48. The exhibition of an invention at an industrial or other exhibition, to which the provisions of this section have been extended by the President of the Union by notification, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition in the place where the exhibition is held, or the use of the invention or the publication of any description thereof during or after the period of the holding of the exhibition by any person elsewhere without the privity or consent of the inventor, or the reading of a paper by an inventor before a learned society, or the publication of that paper in the society's transactions, shall not prejudice the right of the inventor to apply for and obtain a patent in respect of the invention, or the validity of any patent granted on the application : provided that— Provisions as to exhibitions and readings before learned societies.

- (a) the exhibitor exhibiting the invention or the inventor reading the paper or authorizing the publication thereof, as the case may be, gives to the Controller previous notice in the prescribed form ; and
- (b) the application for a patent is made before or within six months from the date of first exhibiting the invention or of the reading of the paper, as the case may be, or when it has not been so read, of the said publication.

49. (1) Subject to the provisions of this section, the rights of a patentee shall not be deemed to be infringed— Special provisions as to vessels, aircraft and land vehicles.

- (a) by the use on board a foreign vessel of the patented invention in the body of the vessel or in the machinery, tackle, apparatus or other accessories thereof, if the vessel comes into the territorial jurisdiction waters of the Union of Burma temporarily or accidentally only, and the invention is used exclusively for the actual needs of the vessel ;

(b) by the use of patented invention in the construction or working of a foreign aircraft or land vehicle or of the accessories thereof if the aircraft or vehicle comes into the Union of Burma temporarily or accidentally only.

(2) This section shall not extend to vessels, aircraft or land vehicles of any foreign State of which the laws do not confer corresponding rights with respect to the use of inventions in vessels, aircraft and land vehicles of [* * *] ¹ the Union of Burma when coming into the foreign State or the territorial waters thereof.

(3) For the purposes of this section vessels and aircraft shall be deemed to be vessels and aircraft of the country in which they are registered, and land vehicles shall be deemed to be vehicles of the country within which the owners thereof are ordinarily resident.

² (4) The President of the Union may, by notification, apply this section to vessels, aircraft or land vehicles of any foreign State.

PART II.

DESIGN.

Registration of Designs.

Application
for registra-
tion of
designs.

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

(2) The application shall be made in the prescribed form and in the prescribed manner and shall be accompanied by the prescribed fee.

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

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

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

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

Registration
of designs in
new classes.

51. Where a design has been registered in one or more classes of goods, the application of the proprietor of the design to register it in some one or

¹ Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

² Substituted by the same Order.

more other classes shall not be refused, nor shall the registration thereof be invalidated--

- (a) on the ground of the design not being a new or original design, by reason only that it was so previously registered ; or
- (b) on the ground of the design having been previously published in the Union of Burma, by reason only that it has been applied to goods of any class in which it was so previously registered :

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

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

Certificate of registration.

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

53. (1) There shall be kept at the Patent Office a book called the Register of Designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may be prescribed.

Register of Designs.

(2) The Register of Designs shall be *prima facie* evidence of any matters by this Act directed or authorized to be entered therein.

Copyright in Registered Designs.

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

Copyright on registration.

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

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

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

Requirements before delivery on sale.

- (a) if exact representations or specimens were not furnished on the application for registration, furnish to the Controller, the prescribed number of exact representations of specimens of the

design ; and, if he fails to do so, the Controller may erase his name from the register, and thereupon the copyright in the design shall cease ; and

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

(2) Where a representation is made to the President of the Union by or on behalf of any trade or industry that in the interests of the trade or industry it is expedient to dispense with or modify as regards any class or description of articles any of the requirements of this section as to marking, the President of the Union may, if he thinks fit, by rule under this Act dispense with or modify such requirements as regards any such class or description of articles to such extent and subject to such conditions as he thinks fit.

Effect of
disclosure on
copyright.

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

Inspection of
registered
designs.

57. (1) During the existence of copyright in a design, or such shorter period not being less than two years from the registration of the design as may be prescribed, the design shall not be open to inspection except by the proprietor or a person authorized in writing by him or a person authorized by the Controller or by the Court, and furnishing such information as may enable the Controller to identify the design, and shall not be open to the inspection of any person except in the presence of the Controller, or of an officer acting under him, and on payment of the prescribed fee ; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof : provided that, where registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.

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

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

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

Information as to existence of copyright.

59. (1) Any person interested may present a petition for the cancellation of the registration of a design —

Cancellation of registration.

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

- (i) that the design has been previously registered in the Union of Burma ; or
- (ii) that the design has been published in the Union of Burma prior to the date of registration ; or
- (iii) that the design is not a new or original design ; or

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

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

60. The provisions of section 25 shall apply to registered designs as if those provisions were re-enacted herein and in terms made applicable to registered designs.

Registration of design to bind the Government.

Industrial and International Exhibitions.

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

Provisions as to exhibitions.

Provided that—

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

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

Legal Proceedings.

Piracy of
registered
design.

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

- (a) for the purpose of sale to apply or cause to be applied to any article in any class of goods in which the design is registered the design or any fraudulent or obvious imitation thereof, except with the licence or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied ; or
- (b) to import for the purposes of sale, without the consent of the registered proprietor, any article belonging to the class in which the design has been registered, and having applied to it the design or any fraudulent or obvious imitation thereof ; or
- (c) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article in any class of goods in which the design is registered without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.

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

- (a) to pay to the registered proprietor of the design a sum not exceeding five hundred rupees recoverable as a contract debt, or
- (b) if the proprietor elects to bring a suit for the recovery of damages for any such contravention, and for an injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly :

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

(3) A suit or proceeding under sub-section (2) shall be instituted in the District Court having jurisdiction to try the suit or proceedings.

(4) When the Court makes a decree in a suit under sub-section (2), it shall send a copy of the decree to the Controller, who shall cause an entry thereof to be made in the Register of Designs.

Application
to designs of
certain provi-
sions of the
Act as to
Patents.

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

copyright in a design for references to a patent, and of references to the proprietor of a design for references to the patentee, and of references to the design for references to the invention.

India II,
1911.
Burma
VI, 1939,

64. Notwithstanding anything to the contrary in this Act any copyright in a design acquired or continued in the Union of Burma under the Indian Patents and Designs Act, 1911 read with the India and Burma (Transitory Provisions) Order, 1937 and the Burma Patents and Designs Act, 1939, as subsequently amended or continued, shall continue to be valid in the Union of Burma for the full term of its validity in India or Pakistan.

Protection in the Union of Burma of designs registered before the commencement of this Act.

PART III.

GENERAL.

Patent Office and Proceedings thereat.

65. There shall be a Controller of Patents and Designs and so many officers and clerks, with such designations and duties, as the President of the Union may from time to time determine.

Controller of Patents and Designs and his establishment.

66. (1) The President of the Union shall, for the purposes of this Act, establish at Rangoon an office which shall be called, and is in this Act referred to as, the Patent Office.

Patent Office.

(2) The Patent Office shall be under the immediate control of the Controller who shall act under the superintendence and direction of the President of the Union.

(3) There shall be a seal for the Patent Office.

(4) Any act or thing directed to be done by or to the Controller may be done by or to any officer authorized by the President of the Union in this behalf.

Fees.

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

Fees.

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

Provisions as to Registers and other Documents in the Patent Office.

Notice of
trust not to
be entered
in registers.

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

Inspection of
and extracts
from
registers.

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

Information
relating to
patents.

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

Privilege of
reports of
or to the
Controller.

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

Prohibition
of publica-
tion of speci-
fication,
drawings,
etc., where
application
abandoned,
etc.

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

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

Power of
Controller
to correct
clerical
errors.

73. The Controller may, on request in writing accompanied by the prescribed fee,

- (a) correct any clerical error in or in connection with an application for a patent or in any patent or any specification;
- (b) correct any clerical error in the representation of a design or in the name or address of the proprietor of any patent or design or in any other matter which is entered upon the register of patents or the register of designs.

Regi-ration
of assign-
ments and
trans-
missions.

74. (1) Where any person becomes entitled by assignment, transmission or other operation of law to a patent or to the copyright in a registered design, he may make application to the Controller to register his title, and the Controller shall, on receipt of such application and on proof of title to his

satisfaction, register him as the proprietor of such patent or design, and shall cause an entry of the assignment, transmission or other instrument affecting the title to be made in the prescribed manner in the register.

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

(3) The person registered as the proprietor of a patent or design shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise deal with, the patent or design, and to give effectual receipts for any consideration for any such assignment, licence or dealing : provided that any equities in respect of the patent or design may be enforced in like manner as in respect of any other movable property.

(4) Except in the case of an application made under section 75, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of sub-sections (1) and (2) shall not be admitted in evidence in any Court in proof of the title to a patent or to copyright in a design or to any interest therein, unless the Court, for reasons to be recorded in writing, otherwise directs.

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

Rectification
of register.

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

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

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

(5) Nothing in this section shall be deemed to empower the Controller—

(a) to rectify the register of patents, or to decide any question relating to a patent, otherwise than for the purpose of correcting a

mistake of fact apparent from a reference either to the patent itself or to some order of a competent authority made under any other provision of this Act, or

(b) to make any such order cancelling the registration of a design as is provided for in section 59.

Powers and Duties of Controller.

Powers of
Controller
in proceed-
ings under
Act.

76. Subject to any rules in this behalf, the Controller in any proceedings before him under this Act shall have the powers of a civil Court for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents, issuing commissions for the examination of witnesses and awarding costs; and such award shall be executable in a civil Court having jurisdiction at the place where the person against whom the costs have been awarded ordinarily resides or has his place of business as if it were a decree of that Court.

Publication
of patented
inventions.

77. The Controller shall issue periodically a publication of patented inventions containing such information as may be prescribed.

Exercise of
discretionary
power by
Controller.

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

Power of
Controller
to take
directions of
President.

79. The Controller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to the President of the Union for directions in the matter.

Refusal to
grant patent
etc., in
certain cases.

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

(2) An appeal shall lie to the President of the Union from an order of the Controller under this section.

Appeals
to the
President.

81. (1) Where an appeal is declared by this Act to lie from the Controller to the President of the Union the appeal shall be made within two months of the date of the order passed by the Controller and shall be in writing and accompanied by the prescribed fee.

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

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

Evidence, etc.

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

Certificate of Controller to be evidence.

83. Subject to any rules made under section 91, in any proceeding under this Act before the Controller the evidence shall be given by affidavit in the absence of directions by the Controller to the contrary; but in any case in which the Controller thinks it right so to do he may take evidence *viva voce* in lieu of or in addition to evidence by affidavit or may allow any party to be cross-examined on the contents of his affidavit.

Evidence before the Controller.

84. Printed or written copies or extracts, purporting to be certified by the Controller and sealed with the seal of the Patent Office, of or from patents, specifications and other documents in the Patent Office, and of or from registers and other books kept there, shall be admitted in evidence in all Courts in the Union of Burma, and in all proceedings, without further proof or production of the originals:

Evidence of documents in Patent Office.

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

85. Copies of all such specifications, drawings and amendments left at the Patent Office, as become open to public inspection under the provisions of this Act, shall be transmitted, as soon as may be after printed copies thereof are available, to such authorities as the President of the Union may appoint in this behalf, and shall be open to the inspection of any person at all reasonable times at places to be appointed by those authorities and approved by the President of the Union.

Transmission of copies of specifications etc., and inspection thereof.

86. Any application, notice or other document authorized or required to be left, made or given at the Patent Office or to the Controller, or to any other person under this Act, may be sent by post.

Applications and notices by post.

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

Declaration by person under disability.

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

Security for costs.

88. Where a person giving notice of any opposition under this Act, or applying for the revocation of a patent, or giving notice of appeal from any decision of the Controller under this Act, neither resides nor carries on business in the Union of Burma, the Controller or the President of the Union or the Court, as the case may be, may require such person to give security for the payment of all costs incurred and likely to be incurred in the proceedings or appeal, as the case may be, and, in default of such security being given, may disallow the opposition or dismiss the application or appeal.

Agency.

Subscription and verification of certain documents.

89. The following documents, namely :

- (1) applications for a patent,
- (2) notices of opposition,
- (3) applications for extension of term of a patent,
- (4) applications for the restoration of lapsed patents,
- (5) applications for leave to amend,
- (6) applications for compulsory licence or revocation, and
- (7) notices of surrenders of patent,

shall be signed and verified, in the manner prescribed, by the person making such applications or giving such notices: Provided that, if such person is absent from the Union of Burma, they may be signed and verified on his behalf by an agent resident in the Union of Burma authorized by him in writing in that behalf.

Agency.

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

(2) The Controller may, if he sees fit, require—

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

Powers, etc., of the President of the Union.

Power of President to make rules.

91. (1) The President of the Union may make such rules as he thinks expedient, subject to the provisions of this Act.—

- (a) for regulating the practice of registration under this Act ;

- (b) for classifying goods for the purposes of designs ;
- (c) for making or requiring duplicates of specifications, drawings and other documents ;
- (d) for securing and regulating the publishing and selling of copies, at such prices and in such manner as the President of the Union thinks fit, of specifications, drawings and other documents ;
- (e) for securing and regulating the making, printing, publishing, and selling of indexes to, and abridgments of, specifications and other documents in the Patent Office, and providing for the inspection of indexes and abridgments and other documents ;
- (f) for the levying of fees and the manner in which they may be paid ;
- (g) generally for regulating the business of the Patent Office, the conduct of proceedings before the Controller and all things by this Act placed under the direction or control of the Controller or of the President of the Union ; and
- (h) generally for the purpose of carrying into effect the provisions of this Act.

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

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

Offences.

92. If any person uses on his place of business, or on any document issued by him or otherwise, the words "Patent Office", or any other words suggesting that his place of business is officially connected with, or is the Patent Office, he shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing offence, with further fine of twenty rupees for each day on which the offence is continued after conviction therefor.

Wrongful
use of words
"Patent
Office".

Reciprocal arrangements with the United Kingdom and India or Pakistan and other parts of His Britannic Majesty's dominions.

¹ 93. Where it is made to appear to the President of the Union that the Legislature of any part of His Britannic Majesty's possessions or of India or Pakistan or of any State in India or Pakistan has made satisfactory provision for the protection of inventions or designs, patented or registered in the Union of Burma, the President may, by notification, direct that the provisions of this Act, with such variations or additions, if any, as may be set out in such notification, shall apply for the protection of inventions or designs patented or registered in that part of His Britannic Majesty's possessions or, in India or Pakistan or in any State in India or Pakistan as the case may be.

Reciprocal
arrange-
ments with
any part of
His Britannic
Majesty's
possessions
or of India or
Pakistan or
of any State
in India or
Pakistan.

¹ Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

¹ 94-95 *

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Schedule.

[See Section 67.]

Fees.

	Rs.
On application for a patent accompanied by provisional specification	10
On filing complete specification after provisional specification ...	20
On application for a patent accompanied by complete specification	30
For sealing a patent	30
1 * * * * *	
Before the expiration of the 4th year from the date of the patent	50
Before the expiration of the 5th year from the date of the patent	50
Before the expiration of the 6th year from the date of the patent	50
Before the expiration of the 7th year from the date of the patent	50
Before the expiration of the 8th year from the date of the patent	100
Before the expiration of the 9th year from the date of the patent	100
Before the expiration of the 10th year from the date of the patent	100
Before the expiration of the 11th year from the date of the patent	100
Before the expiration of the 12th year from the date of the patent	150
Before the expiration of the 13th year from the date of the patent	150
Before the expiration of the 14th year from the date of the patent	150
In respect of the 15th year from the date of the patent ...	150
Provided that the fees for two or more year may be paid in advance.	
On application to extend the term of a patent	50
In respect of each year of the extended term of a patent or of a new patent granted under section 19	150
On application for registration of a design	5

¹ Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.