

CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))

EMERGENCY (PATENTS) ORDER, 1999

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No. S 42

CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))

EMERGENCY (PATENTS) ORDER, 1999

In exercise of the powers conferred by section 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam hereby makes the following Order —

PART I

PRELIMINARY

Short title,
commencement,
long title and
application.

1. (1) This Order may be cited as the Emergency (Patents) Order, 1999 and shall come into operation on such date as the Attorney General may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*, appoint.

(2) The Attorney General may appoint different dates for the coming into operation of the different Parts or provisions of this Order or for different purposes of the same provision.

Cap. 72. (3) The long title of this Order is "An Order to make provision for patents for inventions, to give effect to certain international conventions on patents and to repeal the Inventions Act and for matters connected therewith".

(4) This Order extends to —

(a) the continental shelf (being the area proclaimed by His Highness the Sultan on 30th. June, 1954 by the Continental Shelf Proclamation 1954) and the waters above the continental shelf; and

(b) the airspace above Brunei Darussalam and the continental shelf.

Interpretation.

2. (1) In this Order, unless the context otherwise requires —

"appointed day", in any provision of this Order, means the date appointed under section 1 for the coming into operation of that provision;

"convention country" has the meaning assigned to it by section 89;

"Convention on International Civil Aviation" means the Convention on International Civil Aviation signed at Chicago on the 7th. day of December, 1944;

"Convention on International Exhibitions" means the Convention relating to International Exhibitions signed in Paris on 22nd. November, 1928, as amended or supplemented by any protocol to that convention which is for the time being in force;

"court" means the High Court or an Intermediate Court;

"date of filing", in relation to —

(a) an application for a patent made under this Order, means the date of filing that application by virtue of section 26; and

(b) any other application, means the date which, under the law of the country where the application was made or in accordance with the terms of a treaty or convention to which that country is a party, is to be treated as the date of filing that application in that country or is equivalent to the date of filing an application in that country (whatever the outcome of the application);

"designate", in relation to an international application or a patent, means designate the country or countries (in pursuance of the Patent Co-operation Treaty) in which protection is sought for the invention which is the subject of the international application or patent;

"elect", in relation to an international application for a patent, means elect the designated country or countries (in pursuance of the Patent Co-operation Treaty) in which the applicant intends to use the results of the international preliminary examination;

"employee" means a person who works or (where the employment has ceased) worked under a contract of employment or in employment under or for the purposes of a Government department;

"employer", in relation to an employee, means the person by whom the employee is or was employed;

"European Patent Convention" means the Convention on the Grant of European Patents signed at Munich on the 5th. day of October, 1973;

"European Patent Office" means the office of that name established by the European Patent Convention;

"Examiner" means such person, organisation or foreign or international patent office or organisation as may be prescribed to whom the Registrar may refer questions relating to patents and patent applications, including a search of the relevant prior art, examination and amendment of applications for patents and granted patents;

"exclusive licence" means a licence from the proprietor or applicant for a patent conferring on the licensee, or on him and persons authorised by him, to the exclusion of all other persons (including the proprietor or applicant), any right in respect of the invention to which the patent or application relates, and "exclusive licensee" and "non-exclusive licence" shall be construed accordingly;

"filing fee" means the fee prescribed for the purposes of section 25;

"formal requirements" means those requirements designated as such by regulations made for the purposes of section 28;

"international application for a patent" means an application made under the Patent Co-operation Treaty;

"international application for a patent (Brunei Darussalam)" means an application of that description which, on its date of filing, designates Brunei Darussalam;

"International Bureau" means the secretariat of the World Intellectual Property Organisation established by a convention signed at Stockholm on 14th. July, 1967;

"international exhibition" means an official or officially recognised international exhibition falling within the terms of the Convention on International Exhibitions or falling within the terms of any subsequent treaty or convention replacing that convention;

"inventor", in relation to an invention, means the actual deviser of the invention and "joint inventor" shall be construed accordingly;

"mortgage", when used as a noun, includes a charge for securing money or money's worth and, when used as a verb, shall be construed accordingly;

"Paris Convention" means the Convention for the Protection of Industrial Property signed at Paris on 20th. March, 1883;

"patent" means a patent under this Order and includes a patent in force by virtue of section 117(4);

"Patent Co-operation Treaty" means the treaty of that name signed at Washington on 19th. June, 1970;

"patented invention" means an invention for which a patent is granted and "patented process" shall be construed accordingly;

"patented product" means a product which is a patented invention or, in relation to a patented process, a product obtained directly by means of the process or to which the process has been applied;

"person" or "party" includes the Government;

"priority date" means the date determined as such under section 17;

"publish" or "published" means made available to the public (whether in Brunei Darussalam or elsewhere) and a document shall be taken to be published under any provision of this Order if it can be inspected as of right at any place in Brunei Darussalam by members of the public, whether on payment of a fee or not; and "republished" shall be construed accordingly;

"Register", when used as a noun, means the Register of Patents kept under section 42 or the Register of persons referred to in section 104 and, "register", when used as a verb, means, in relation to any thing, to register or register particulars, or enter notice, of that thing in the Register and, when used in relation to a person, means to enter his name in the Register;

"registered patent agent" means a person whose name is entered in the Register of persons kept in accordance with the regulations made under section 104;

"Registrar" means the Registrar of Patents and includes any Deputy Registrar of Patents holding office under this Order;

"Registry" means the Registry of Patents established under this Order;

"right", in relation to any patent or application, includes an interest in the patent or application and, without prejudice to the foregoing, any reference to a right in a patent includes a reference to a share in the patent;

"scientific adviser" means any person with any scientific qualification, any medical practitioner, engineer, architect, surveyor, accountant, actuary and any other specially skilled person;

"services of the Government" and "use for the services of the Government" have the same meanings as in section 59(2), including, as respects any period of emergency within the meaning of section 64, the meanings assigned to them by that section;

"work", in relation to a patented invention, means:

(a) where the invention is a product — make or import the product; or

(b) where the invention is a process or a method — use the process or method or do any act mentioned in paragraph (a) in respect of a product resulting from such use.

(2) Regulations may provide for stating in the *Gazette* that an exhibition falls within the definition of international exhibition in subsection (1) and any such statement shall be conclusive evidence that the exhibition falls within that definition.

(3) For the purposes of this Order, a matter shall be taken to have been disclosed in any relevant application within the meaning of section 17 or in the specification of a patent if it was either claimed or described (otherwise than by way of disclaimer or acknowledgment of prior art) in that application or specification.

(4) References in this Order to an application for a patent, as filed, are references to such an application in the state it was on the date of filing.

(5) References in this Order to an application for a patent being published are references to its being published under section 27.

(6) References in this Order to the Paris Convention or the Patent Co-operation Treaty are references to that convention or any other international convention or agreement replacing it, as amended or supplemented by any convention or international agreement (including in either case any protocol or annex) to which Brunei is a party, or in accordance with the terms of any such convention or agreement and include references to any instrument made under any such convention or agreement.

(7) The Emergency (Arbitration) Order, 1994 shall not apply to any proceedings before the Registrar under this Order.

3. This Order shall bind the Government.

Application to
Government.

PART II

ADMINISTRATION

4. (1) There shall be a Registrar of Patents who shall have the chief control of the Registry of Patents.

Registrar of
Patents and
other officers.

(2) There shall be one or more Deputy Registrars of Patents who shall, subject to the control of the Registrar, have all the powers and functions of the Registrar under this Order, other than the powers of the Registrar under section 5.

(3) There shall be one or more Assistant Registrars of Patents.

(4) The Registrar and Deputy Registrars under this section shall be appointed by His Majesty the Sultan and Yang Di-Pertuan.

5. (1) The Registrar may, in relation to a particular matter or class of matters, by writing under his hand, delegate all or any of his powers or functions under this Order (except this power of delegation) to an Assistant Registrar of Patents or any public officer so that the delegated powers and functions may be exercised by the delegate with respect to the matter or class of matters specified in the instrument of delegation.

Delegation by
Registrar.

(2) A delegation under this section is revocable at will and no delegation shall prevent the exercise of a power or function by the Registrar or by any Deputy Registrar of Patents.

6. For the purposes of this Order, there shall be an Office which shall be known as the Registry of Patents.

Registry of
Patents.

7. (1) There shall be a seal of the Registry and the seal shall be such device as may be approved by the Attorney General.

Seal of Registry.

(2) Impressions of the seal shall be judicially noticed and admitted in evidence.

8. The Registrar may, for the purposes of this Order —

Powers of
Registrar.

(a) summon witnesses;

(b) receive evidence on oath, whether orally or otherwise;

(c) require the production of documents or articles; and

(d) award costs against a party to proceedings before him.

Disobedience to
summons an
offence.

9. (1) A person who has been summoned to appear as a witness before the Registrar shall not, without lawful excuse, fail to appear in obedience to the summons.

(2) A person who has been required by the Registrar to produce a document or article shall not, without lawful excuse, fail to produce the document or article.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 months or to both.

Refusal to
give evidence
an offence.

10. (1) A person who appears before the Registrar shall not, without lawful excuse, refuse to be sworn or to make an affirmation, or to produce documents or articles, or to answer questions, which he is lawfully required to produce or answer.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 months or to both.

Officers not to
traffic in
inventions.

11. (1) An officer or person employed in the Registry shall not buy, sell, acquire or traffic in an invention or patent, whether granted in Brunei Darussalam or elsewhere, or in a right to, or licence under, a patent, whether granted in Brunei Darussalam or elsewhere.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 months or to both.

(3) A purchase, sale, acquisition, assignment or transfer made or entered into in contravention of this section is void.

(4) This section shall not apply to the actual inventor or to an acquisition by bequest or devolution in law.

Officers not
to furnish
information.

12. (1) An officer or person employed in the Registry shall not, except when required or authorised by this Order, or under a direction in writing of the Registrar or by order of a court —

(a) furnish information on a matter which is being, or has been, dealt with under this Order;

(b) prepare, or assist in the preparation of, a document required or permitted by or under this Order to be lodged in the Registry; or

(c) conduct a search in the records of the Registry.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 months or to both.

PART III

PATENTABILITY

13. (1) Subject to subsections (2) and (3), a patentable invention is one that satisfies the following conditions — Patentable inventions.

(a) the invention is new;

(b) it involves an inventive step; and

(c) it is capable of industrial application.

(2) It is hereby declared that the following (among other things) are not inventions for the purposes of this Order, that is to say, anything which consists of —

(a) a discovery, scientific theory or mathematical method;

(b) a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever;

(c) a scheme, rule or method of doing business, performing a purely mental act, or playing a game; or

(d) the mere presentation of information,

but the foregoing provisions shall prevent anything from being treated as an invention for the purposes of this Order only to the extent that a patent or an application for a patent relates to that thing as such.

(3) An invention the publication or exploitation of which would be generally expected to encourage offensive, immoral or anti-social behaviour is not a patentable invention.

(4) For the purposes of subsection (3), behaviour shall not be regarded as offensive, immoral or anti-social only because it is prohibited by any law in force in Brunei Darussalam.

Novelty.

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

(2) The state of the art in the case of an invention shall be taken to comprise all matter (whether a product, a process, information about either, or anything else) which has at any time before the priority date of that invention been made available to the public (whether in Brunei Darussalam or elsewhere) by written or oral description, by use or in any other way.

(3) The state of the art in the case of an invention to which an application for a patent or a patent relates shall be taken also to comprise matter contained in an application for another patent which was published on or after the priority date of that invention, if the following conditions are satisfied —

(a) that matter was contained in the application for that other patent both as filed and as published; and

(b) the priority date of that matter is earlier than that of the invention.

(4) For the purposes of this section, the disclosure of matter constituting an invention shall be disregarded in the case of a patent or an application for a patent if occurring later than the beginning of the period of 12 months immediately preceding the date of filing the application for the patent and either —

(a) the disclosure was due to, or made in consequence of, the matter having been obtained unlawfully or in breach of confidence by any person —

(i) from the inventor or from any other person to whom the matter was made available in confidence by the inventor or who obtained it from the inventor because he or the inventor believed that he was entitled to obtain it; or

(ii) from any other person to whom the matter was made available in confidence by any person mentioned in sub-paragraph (i) or in this sub-paragraph or who obtained it from any person so mentioned because he or the person from whom he obtained it believed that he was entitled to obtain it;

(b) the disclosure was made in breach of confidence by any person who obtained the matter in confidence from the inventor or from any other person to whom it was made available, or who obtained it, from the inventor;

(c) the disclosure was due to, or made in consequence of, the inventor displaying the invention at an international exhibition and the applicant states, on filing the application, that the invention has been so displayed and also, within the prescribed period, files written evidence in support of the statement complying with any prescribed conditions; or

(d) the disclosure was due to, or made in consequence of, the inventor describing the invention in a paper read by him or another person with his consent or on his behalf before any learned society or published with his consent in the transactions of any learned society.

(5) For the purpose of subsection (4)(d), "learned society" includes any club, association or the like constituted in Brunei Darussalam or elsewhere whose main object is the promotion of any branch of learning or science.

(6) In this section, reference to the inventor include references to any proprietor of the invention for the time being.

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

15. An invention shall be taken to involve an inventive step if it is not obvious to a person skilled in the art, having regard to any matter which forms part of the state of the art by virtue only of section 14(2) and without having regard to section 14(3). **Inventive step.**

16. (1) Subject to subsection (2), an invention shall be taken to be capable of industrial application if it can be made or used in any kind of industry, including agriculture. **Industrial application.**

(2) An invention of a method of treatment of the human or animal body by surgery or therapy or of diagnosis practised on the human or animal body shall not be taken to be capable of industrial application.

(3) Subsection (2) shall not prevent a product consisting of a substance or composition being treated as capable of industrial application merely because it is invented for use in any such method.

17. (1) For the purposes of this Order, the priority date of an invention to which an application for a patent relates and also of any matter **Priority date.**

(whether or not the same as the invention) contained in the application is, except as provided by the provisions of this Order, the date of filing the application.

(2) If in, or in connection with, an application for a patent (the application in suit) a declaration is made, whether by the applicant or any predecessor in title of his, complying with the relevant requirements of the regulations and specifying one or more earlier relevant applications for the purposes of this section made by the applicant or a predecessor in title of his and each having a date of filing during the period of 12 months immediately preceding the date of filing the application in suit, then —

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

(b) the priority date of any matter contained in the application in suit which was also disclosed in the earlier relevant application or applications shall be the date of filing the relevant application in which that matter was disclosed or, if it was disclosed in more than one relevant application, the earliest of them.

(3) Where an invention or other matter contained in the application in suit was also disclosed in two earlier relevant applications filed by the same applicant as in the case of the application in suit or, a predecessor in title of his, and the second of those relevant applications was specified in or in connection with the application in suit, the second of those relevant applications shall, so far as it concerns that invention or matter, be disregarded unless —

(a) it was filed in or in respect of the same country as the first;
and

(b) not later than the date of filing the second, the first (whether or not so specified) was unconditionally withdrawn, or was abandoned or refused, without —

- (i) having been made available to the public whether in Brunei Darussalam or elsewhere;
- (ii) leaving any rights outstanding; and
- (iii) having served to establish a priority date in relation to another application, wherever made.

{4} This section shall apply for determining the priority date of an invention for which a patent has been granted as it applies for determining the priority date of an invention to which an application for that patent relates.

{5} In this section and section 18, "relevant application" means any of the following applications which has a date of filing —

(a) an application for a patent under this Order; or

(b) an application in or for a convention country for protection in respect of an invention or an application which, in accordance with the law of a convention country or a treaty or international convention to which a convention country is a party, is equivalent to such an application.

18. (1) It is hereby declared for the avoidance of doubt that where an application (the application in suit) is made for a patent and a declaration is made in accordance with section 17(2) in or in connection with that application specifying an earlier relevant application, the application in suit and any patent granted in pursuance of it shall not be invalidated by reason only of the relevant intervening acts.

Disclosure of matter, etc., between earlier and later applications.

(2) In subsection (1), "relevant intervening acts" means acts done in relation to matter disclosed in an earlier relevant application between the dates of the earlier relevant application and the application in suit, as for example, filing another application for the invention for which the earlier relevant application was made, making information available to the public about that invention or that matter or, working that invention, but disregarding any application, or the disclosure to the public of matter contained in any application, which is itself to be disregarded for the purposes of section 17(3).

PART IV

RIGHT TO APPLY FOR AND OBTAIN PATENT

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

Right to apply for and obtain patent.

20. (1) Subject to this section, a patent for an invention may be granted to —

Right to a patent.

(a) the inventor or his successor in title, and if two or more persons have jointly made an invention, the patent shall be granted to them jointly; or

(b) any person or persons who has or have a right to the patent by virtue of subsection (2), (3) or (4) or the successor or successors in title of such person or persons.

(2) Where either of the conditions in subsection (3) is satisfied, the right to a patent for an invention made by an employee shall, as between him and his employer, be taken to belong to his employer for the purposes of this Order if —

(a) the invention was made in the course of the normal duties of the employee or in the course of duties falling outside his normal duties, but specifically assigned to him, and the circumstances in either case were such that an invention might reasonably be expected to result from the carrying out of his duties; or

(b) the invention was made in the course of the duties of the employee and, at the time of making the invention, because of the nature of his duties and the particular responsibilities arising from the nature of his duties he had a special obligation to further the interests of the employer's undertaking;

and the right to a patent for any other invention made by an employee shall, as between him and his employer, be taken for those purposes to belong to the employee.

(3) The conditions referred to in subsection (2) are —

(a) the employee was mainly employed in Brunei Darussalam; or

(b) the employee was not mainly employed anywhere or his place of employment could not be determined, but his employer had a place of business in Brunei Darussalam to which the employee was attached, whether or not he was also attached elsewhere.

(4) Where neither of the conditions in subsection (3) is satisfied, the right to a patent shall be determined in accordance with the law of the state in which the employee is wholly or mainly employed or, if the identity of such state cannot be determined, in accordance with the law of the state in which the employer has his place of business to which the employee is attached.

(5) Where by virtue of this section the right to a patent for an invention belongs, as between him and his employer, to an employee, nothing done —

(a) by or on behalf of the employee or any person claiming under him for the purposes of pursuing an application for a patent; or

(b) by any person for the purpose of performing or working the invention,

shall be taken to infringe any copyright or design right to which, as between him and his employer, his employer is entitled in any model or document relating to the invention.

(6) In subsection (5), the reference to application for a patent includes an application for other protection for an invention, and includes an application for a patent or any other protection under the law of a country other than Brunei Darussalam or under any treaty to which Brunei Darussalam is a party.

21. (1) Section 20 shall not apply to an invention made before the appointed day.

Supplementary provisions.

(2) In this Part, except so far as the context otherwise requires, references to the making of an invention by an employee are references to his making it alone or jointly with any other person, but do not include references to his merely contributing advice or other assistance in the making of an invention by another employee.

(3) Nothing in this Part shall be construed as precluding the operation of an agreement or a contract in relation to the right to an invention or a patent for an invention.

22. (1) If any dispute arises between joint applicants for a patent whether or in what manner the application should be proceeded with, the Registrar may, on a request made by any of the parties, give such directions as he thinks fit for enabling the application to proceed in the name of one or more of the parties alone or for regulating the manner in which it shall be proceeded with, or for both those purposes, as the case may require.

Handling of application by joint applicants.

(2) If it appears to the Registrar on a request made under this section that the dispute would more properly be determined by the court, he may decline to deal with it and, without prejudice to the court's jurisdiction to determine any such dispute and make a declaration, the court shall have jurisdiction to do so.

23. Where directions are given under section 22 that an application for a patent shall proceed in the name of one or some of the original applicants (whether or not it is also to proceed in the name of some other person), any licences or other rights in or under the application shall, subject to the provisions of the order and any directions under that section, continue in force and be treated as granted by the persons in whose name the application is to proceed.

Effect of transfer of application under section 22.

Mention of
inventor.

24. (1) The inventor or joint inventors of an invention shall have a right to be mentioned as such in any patent granted for the invention and shall also have a right to be so mentioned, if possible, in any published application for a patent for the invention and, if not so mentioned, a right to be so mentioned in accordance with the regulations in a prescribed document.

(2) Unless he has already given the Registry the information mentioned in this subsection, an applicant for a patent shall, within the prescribed period, file with the Registry a statement —

(a) identifying the person or persons whom he believes to be the inventor or inventors; and

(b) where the applicant is not the sole inventor or the applicants are not the joint inventors, indicating the derivation of his or their right to be granted the patent,

and, if he fails to do so, the application shall be treated as having been abandoned.

(3) Where a person has been mentioned as a sole or joint inventor in pursuance of this section, any other person who alleges that the former ought not to have been mentioned may at any time apply to the Registrar for a certificate to that effect, and the Registrar may issue such a certificate.

PART V

APPLICATIONS FOR PATENTS

Making of
application.

25. (1) Every application for a patent shall be —

(a) made in the prescribed language and in the prescribed form, and shall be filed at the Registry in the prescribed manner; and

(b) accompanied by the fee prescribed for the purposes of this subsection.

(2) Where an application is not accompanied by the fee mentioned in subsection (1)(b), the fee shall be paid within the prescribed period.

(3) Every application for a patent shall contain —

(a) a request for the grant of a patent;

(b) a specification containing a description of the invention, a claim or claims and any drawing referred to in the description or any claim; and

(c) an abstract,

but this subsection shall not prevent an application being initiated by documents complying with section 26(1).

(4) The specification of an application shall disclose the invention in a manner which is clear and complete for the invention to be performed by a person skilled in the art.

(5) The claim or claims shall —

(a) define the matter for which the applicant seeks protection;

(b) be clear and concise;

(c) be supported by the description; and

(d) relate to one invention or to a group of inventions which are so linked as to form a single inventive concept.

(6) Without prejudice to the generality of subsection (5)(d), the regulations may provide for treating two or more inventions as being so linked as to form a single inventive concept for the purposes of this Order.

(7) The purpose of the abstract is to give technical information and cannot be taken into account for any other purpose, particularly not for the purpose of interpreting the scope of the protection sought, and on publication it shall not form part of the state of the art by virtue of section 14(3), and the Registrar may determine whether the abstract adequately fulfils its purpose and, if it does not, may reframe it so that it does.

(8) An application for a patent may be withdrawn at any time before the patent is granted and any withdrawal of such an application may not be revoked.

26. (1) The date of filing an application for a patent shall, subject to the provisions of this Order, be taken to be the earliest date on which all the following requirements are satisfied in relation to the application —

Date of filing
application.

(a) the documents initiating the application as filed at the Registry are in the prescribed language;

(b) those documents contain an indication that a patent is sought in pursuance of the application;

(c) those documents identify the applicant or applicants for the patent; and

(d) those documents contain a part which on the face of it appears to be a description of the invention and a part which on the face of it appears to be one or more claims, whether or not the description or the claim or claims complies with the other provisions of this Order and with any relevant rules.

(2) Every application for a patent shall be examined on filing to determine whether —

(a) the filing fee has been paid; and

(b) the application satisfies the requirements of subsection (1) for the accordence of a filing date.

(3) If a date of filing cannot be accorded, the Registrar shall give the applicant an opportunity to remedy the deficiencies, and if the deficiencies are not remedied within the prescribed period, the application shall be treated as having been abandoned.

(4) If the filing fee has not been paid within the period prescribed under section 25(2), the application shall be treated as having been abandoned.

(5) If before the grant of a patent under section 30 it is found that any drawing referred to in any such application is filed later than the date which by virtue of subsection (1) is to be treated as the date of filing the application, the Registrar shall give the applicant an opportunity of requesting, within the prescribed period, that the date on which the drawing is filed shall be treated for the purposes of this Order as the date of filing the application, and

(a) if the applicant makes any such request, the date of filing the drawing shall be so treated; but

(b) otherwise any reference to the drawing in the application shall be treated as omitted.

(6) Where, after an application for a patent has been filed and before the patent is granted, a new application is filed by the original applicant or his successor in title in accordance with the regulations in respect of any part of the matter contained in the earlier application and the conditions mentioned in subsection (1) are satisfied in relation to the

new application (without the new application contravening section 84), the new application shall be treated as having, as its date of filing, the date of filing the earlier application.

(7) Nothing in subsection (5) shall be construed as affecting the power of the Registrar under section 107(1) to correct errors or mistakes with respect to the filing of drawings.

27. (1) Subject to section 33, where an application has a date of filing, then, as soon as possible after the end of the prescribed period, the Registrar shall, unless the application is withdrawn, treated as having been abandoned or refused before preparations for its publication have been completed by the Registry, publish it as filed (including not only the original claims but also any amendments of those claims and new claims subsisting immediately before the completion of those preparations) and he may, if so requested by the applicant, publish it as aforesaid during that period, and in either event shall publish the fact and date of its publication in the *Gazette*.

Publication of
application.

(2) The Registrar may omit from the specification of a published application for a patent any matter which in his opinion —

(a) disparages any person in a way likely to damage him; or

(b) would, if published or exploited, generally be expected to encourage offensive, immoral or anti-social behaviour.

PART VI

PROCEDURE FOR GRANT OF PATENT

28. (1) Where an application for a patent has a date of filing and is not withdrawn or treated as having been abandoned, the Registrar shall as soon as practicable after the end of the prescribed period examine the application so as to determine whether the application complies with those requirements of this Order and the regulations which are designated by the regulations as formal requirements for the purposes of this Order.

Examination as
to form.

(2) Where after an examination under subsection (1) it is determined that not all the formal requirements are complied with, the Registrar shall give the applicant an opportunity to make representations and to amend the applications within such period as the Registrar may specify so as to comply with those requirements (subject, however, to section 84), and, if the applicant fails to do so, the Registrar may refuse the application.

29. (1) Where an application for a patent complies with all the formal requirements referred to in section 28(1), the Registrar shall notify the applicant who shall —

State of the
art search.

(a) file a request in the prescribed form and pay the prescribed fee for a search report within the prescribed period; or

(b) where the applicant has filed, alone or jointly with any other person, one or more corresponding international applications for a patent, not designating Brunei Darussalam, or one or more corresponding applications for a patent at any prescribed patent office, file in the prescribed manner a copy of a search, or a search and examination report or reports in respect of the corresponding international applications or other corresponding applications, that report or those reports being in respect of the same or, substantially the same invention as defined in the claims, or the claims as amended, in the application made under this Order and pay the prescribed fee within the prescribed period,

and if the applicant fails to make a request for a search report in the prescribed form, file in the prescribed manner a copy of a search or search and examination report or reports or pay the prescribed fee within the prescribed period, the application shall be treated as having been abandoned at the end of the period prescribed under paragraph (a), or (b), whichever is the later.

(2) Where the applicant has filed a request and paid the fee under subsection (1)(a), the Registrar shall cause the application to be subject to a search by an Examiner to discover the relevant prior art contained in such documentation as may be prescribed.

(3) Upon receipt of the report of the search carried out under subsection (2), the Registrar shall send to the applicant a copy of the report.

(4) For the purposes of this Part, "corresponding international application" and "corresponding application", in relation to an invention, mean an application for protection filed, respectively, under the Patent Co-operation Treaty or with any prescribed patent office and having at least one claim directed towards the same or substantially the same invention as that for which patent protection is being sought in the application in suit, the application filed under the Patent Co-operation Treaty or with the prescribed patent office being —

(a) the basis for a priority claim under section 17 in the application in suit; or

(b) subject to a priority claim based on the application in suit or an application which is also the basis for a priority claim under section 17 in the application in suit.

30. (1) Subject to section 34, where before the end of the prescribed period the conditions in subsection (2) are satisfied, the Registrar shall grant the applicant a patent. Conditions for grant of patent.

(2) The conditions referred to in subsection (1) are —

(a) that all the formal requirements have been complied with;

(b) in the case of an international application for a patent (Brunei Darussalam) —

(i) that the relevant conditions of section 86(3) and the regulations have been satisfied and the international search report in English has been received by the Registrar; and in addition

(ii) where Brunei Darussalam has been elected in accordance with Chapter II of the Patent Cooperation Treaty, that the international preliminary examination report in English of the application has been received by the Registrar —

(c) in any other case, that the following reports have been received by the Registrar —

(i) the search report referred to in section 29(1)(a); or

(ii) the report or reports referred to in section 29(1)(b); and

(d) that the prescribed fee for the grant of a patent has been paid.

(3) Notwithstanding subsection (1), the Registrar may refuse to grant a patent —

(a) in pursuance of more than one application where two or more applications for a patent for the same invention having the same priority date have been filed by the same applicant or his successor in title; or

(b) in respect of any thing referred to in section 13(2) or any invention referred to in section 13(3).

(4) Where an application for a patent has not, before the end of the period prescribed under subsection (1), satisfied the conditions referred to in subsection (2), the application shall be treated as having been abandoned at the end of that period.

(5) If at the end of the period prescribed under subsection (1) an appeal to the court is pending in respect of the application or the time within which such an appeal could be brought has not expired, that period —

(a) where such an appeal is pending, or is brought within the said time or before the expiration of any extension of that time granted (in the case of a first extension) on an application made within that time or (in the case of a subsequent extension) on an application made before the expiration of the last previous extension, shall be extended until such date as the court may determine;

(b) where no such appeal is pending or is so brought, shall continue until the end of the said time or, if any extension of that time is so granted, until the expiration of the extension or last extension so granted.

General power
to amend
application
before grant.

31. At any time before a patent is granted in pursuance of an application, the applicant may in accordance with the prescribed conditions and subject to section 84, amend the application of his own volition.

Restrictions on
applications
abroad by
Brunei
Darussalam
residents.

32. (1) Subject to this section, no person resident in Brunei Darussalam shall, without written authority granted by the Registrar, file or cause to be filed outside Brunei Darussalam an application for a patent unless —

(a) an application for a patent for the same invention has been filed at the Registry not less than two months before the application outside Brunei Darussalam; and

(b) no directions have been given under section 33 in relation to the application in Brunei Darussalam or all such directions have been revoked.

(2) Subsection (1) shall not apply to an application for an invention for which an application for a patent has first been filed in a country outside Brunei Darussalam by a person resident outside Brunei Darussalam.

(3) Any person who files or causes to be filed an application for the grant of a patent in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding two years or to both.

(4) In this section —

(a) any reference to an application for a patent includes a reference to an application for other protection for an invention;

(b) any reference to either kind of application is a reference to an application under this Order, under the law of any country other than Brunei Darussalam or under any treaty or international convention to which Brunei Darussalam is a party; and

(c) "person resident in Brunei Darussalam" includes —

(i) a person who, at the material time, is residing in Brunei Darussalam by virtue of a valid pass lawfully issued to him under the Immigration Act to enter and remain in Brunei Darussalam for any purpose; and

(ii) a body corporate or partnership which at the material time, is incorporated, or carrying on business, in Brunei Darussalam.

Cap. 17.

33. (1) Subject to any directions of the Attorney General, the Registrar may, if it appears to the Registrar to be necessary or expedient to do so in the interests of the defence of Brunei Darussalam, by written order prohibit or restrict the publication of information about the subject matter of an application for a patent filed at the Registry (including an international application for a patent), and if the application is an international application filed at the Registry, a copy of it shall not be sent to the International Bureau.

Prohibition of publication of information about inventions in the interests of defence.

(2) Any person who contravenes a written order under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) Nothing in this section shall prevent the Registrar from disclosing information concerning the invention to a government department or authority for the purpose of obtaining advice as to whether a written order under this section with respect to an application for a patent for that invention should be made, amended or revoked.

34. (1) While an order made under section 33 is in force in relation to an application for a patent, the application may proceed up to the grant of the patent, but the application shall not be published, and a patent shall not be granted on the application.

Effect of prohibition order on applications.

(2) Where an order under section 33 in relation to an application for a patent is revoked and the period prescribed under section 27 has ended, the application shall be published and if the conditions specified in section 30(2) have been satisfied, the Registrar shall, as soon as practicable, grant a patent on the application.

(3) Where a patent is granted in pursuance of an application in respect of which a written order has been made under section 33, no renewal fees shall be payable in respect of any period during which the order was in force.

(4) Where as a result of an order or of anything done in reliance under section 33, an international application for a patent (Brunei Darussalam) is, under the Patent Co-operation Treaty, considered withdrawn, the applicant may make, within the prescribed period, a request in the prescribed form that the international application be treated as an application made under section 25 and, if the applicant files the prescribed documents and pays the prescribed fee, then except as otherwise prescribed —

(a) the international application shall be treated as an application under section 25;

(b) the description, claims and any drawings in the international application shall be treated as a specification referred to in section 25(3); and

(c) the application shall be treated as having been filed on the date of filing the international application.

PART VII

PROVISIONS AS TO PATENTS AFTER GRANT

Publication and
certificate of
grant.

35. (1) As soon as practicable after a patent has been granted under this Order, the Registrar shall publish in the *Gazette* a notice that it has been granted.

(2) The Registrar shall, as soon as practicable after he publishes a notice under subsection (1), send the proprietor of the patent a certificate in the prescribed form that the patent has been granted to the proprietor.

(3) The Registrar shall, at the same time as he publishes a notice under subsection (1) in relation to a patent, publish the specification of the patent, the names of the proprietor and (if different) the inventor, and any other matters constituting or relating to the patent which in the Registrar's opinion it is desirable to publish.

36. (1) A patent granted under this Order shall be treated for the purposes of this Order as having been granted, and shall take effect on the date on which notice of its grant is published in the *Gazette* and, subject to subsection (2), shall continue in force until the end of the period of 20 years beginning with the date of filing the application for the patent or with such other date as may be prescribed.

Term of patent.

(2) A patent shall cease to have effect at the end of the prescribed period for the payment of any renewal fee if it is not paid within that period.

(3) If during the period of 6 months immediately following the end of the prescribed period the renewal fee and any prescribed additional fee are paid, the patent shall be treated for the purposes of this Order as if it had never expired, and accordingly —

(a) anything done under or in relation to it during that further period shall be valid;

(b) an act which would constitute an infringement of the patent if it had not expired shall constitute such an infringement; and

(c) an act which would constitute the use of the patented invention for the services of the Government if the patent had not expired shall constitute that use.

(4) Regulations may include provision requiring the Registrar to notify the registered proprietor of a patent that a renewal fee has not been received from him in the Registry before the end of the prescribed period and before the framing of the notification and, in the case of a patent in force by virtue of section 117(4), requiring at the time of payment of any renewal fee, the furnishing to the Registrar of —

(a) where the patent is renewed for the first time under this section, evidence of the fact that the patent remains in force in the United Kingdom, Malaysia or Singapore, as the case may be; and

(b) for every subsequent renewal under this section, evidence as prescribed that the patent has not been revoked in the United Kingdom, Malaysia or Singapore, as the case may be.

37. No person may in any proceeding object to a patent or to an amendment of a specification of a patent on the ground that the claims contained in the specification of the patent, as they stand or, as the case may be, as proposed to be amended, relate —

Patent not to be impugned for lack of unity.

(a) to more than one invention; or

(b) to a group of inventions which are not so linked as to form a single inventive concept.

General power
to amend
specification
after grant.

38. (1) Subject to this section and to section 84, the Registrar may, on a request to amend made by the proprietor of a patent, allow the specification of the patent to be amended so as to —

(a) delete a claim;

(b) restrict a claim by combining that claim with one or more other claims in the patent as granted; or

(c) restrict a claim in some other way provided that the claim so restricted —

(i) refers to the same invention as in the claim before it is restricted; and

(ii) defines a form of the invention that is described in the specification of the granted patent and in the application as filed,

and if the proprietor makes any such request, the Registrar may also allow consequential amendment of the description so that the resultant amended claim or claims are supported by the description.

(2) The proprietor of a patent may make a request to amend the specification of a patent in a manner as referred to —

(a) in paragraph (a) or (b) of subsection (1), at any time after the grant of the patent; and

(b) in paragraph (c) of subsection (1), within a period of 4 years from the date of grant of the patent.

(3) No such amendment shall be allowed under this section where there are pending before the court proceedings in which the validity of the patent may be put in issue.

(4) A person may give notice to the Registrar of his opposition to an amendment of the specification of a patent in the manner referred to in paragraph (c) of subsection (1), and if he does so, the Registrar shall notify the proprietor of the patent and consider the opposition in deciding whether the amendment or any amendment should be allowed.

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

39. (1) Where a patent has ceased to have effect by reason of a failure to pay any renewal fee, an application for the restoration of the patent may be made to the Registrar within the prescribed period.

Restoration of
lapsed patents.

(2) An application under this section may be made by the person who was the proprietor of the patent or by any other person who would have been entitled to the patent if it had not ceased to have effect; and where the patent was held by two or more persons jointly, the application may, with the leave of the Registrar, be made by one or more of them without joining the others.

(3) Notice of the application shall be published by the Registrar in the prescribed manner.

(4) If the Registrar is satisfied that the proprietor of the patent took reasonable care to see that any renewal fee was paid within the prescribed period or that that fee and any prescribed additional fee were paid within the 6 months immediately following the end of that period, the Registrar shall by order restore the patent on payment of any unpaid renewal fee and any prescribed additional fee.

(5) An order under this section may be made subject to such conditions as the Registrar thinks fit (including a condition requiring compliance with any provisions of the regulations relating to registration which have not been complied with), and if the proprietor of the patent does not comply with any such condition of the order, the Registrar may revoke the order and give such directions consequential on the revocation as he thinks fit.

(6) The effect of an order for the restoration of a patent shall be as provided in subsections (7) to (11).

(7) Anything done under or in relation to the patent during the period between expiry and restoration shall be treated as valid.

(8) Anything done during that period which would have constituted an infringement if the patent had not expired shall be treated as an infringement —

(a) if done at a time when it was possible for the patent to be renewed under section 36(3);

(b) if it was a continuation or repetition of an earlier infringing act.

(9) If after it was no longer possible for the patent to be so renewed, and before publication of notice of the application for restoration, a person —

(a) began in good faith to do an act which would have constituted an infringement of the patent if it had not expired; or

(b) made in good faith effective and serious preparations to do such an act,

he has the right to continue to do the act or, as the case may be, to do the act, notwithstanding the restoration of the patent; but this right does not extend to granting a licence to another person to do the act.

(10) If the act was done, or the preparations were made, in the course of a business, the person entitled to the right conferred by subsection (9) may —

(a) authorise the doing of that act by any partners of his for the time being in that business; and

(b) assign that right, or transmit it on death (or in the case of a body corporate on its dissolution), to any person who acquires that part of the business in the course of which the act was done or the preparations were made.

(11) Where a product is disposed of to another in exercise of the rights conferred by subsection (9) or (10), that other and any person claiming through him may deal with the product in the same way as if it had been disposed of by the registered proprietor of the patent.

(12) Subsections (7) to (11) shall apply in relation to the use of a patent for the services of the Government as they apply in relation to infringement of the patent.

**Surrender of
patents.**

40. (1) The proprietor of a patent may at any time by notice given to the Registrar offer to surrender his patent and receipt of the notice shall be advertised in the manner prescribed.

(2) A person may give notice to the Registrar of his opposition to the surrender of a patent under this section, and if he does so the Registrar shall notify the proprietor of the patent and determine the question.

(3) If the Registrar is satisfied that the patent may properly be surrendered, he may accept the offer and, as from the date when notice of his acceptance is published in the *Gazette*, the patent shall cease to have effect, but no action for infringement shall lie in respect of any act done before that date and no right to compensation shall accrue for any use of the patented invention before that date for the services of the Government.

PART VIII

PROPERTY IN PATENTS AND APPLICATIONS FOR PATENTS AND REGISTRATION

41. (1) Any patent or application for a patent is personal property (without being a thing in action), and any patent or any application for a patent and rights in or under it may be transferred, created or granted in accordance with this section.

Nature of, and transactions in, patents and applications for patents.

(2) Subject to section 46(3), any patent or any application for a patent, or any right in it, may be assigned or mortgaged.

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

(4) Subject to section 46(3), a licence may be granted under any patent or any application for a patent to work the invention which is the subject of the patent or the application; and —

(a) to the extent that the licence so provides, a sub-licence may be granted under any such licence and any such licence or sub-licence may be assigned or mortgaged; and

(b) any such licence or sub-licence shall vest by operation of law in the same way as any other personal property and may be vested by an assent of personal representatives.

(5) Subsections (2) to (4) shall have effect subject to the provisions of this Order.

(6) Any of the following transactions, that is to say —

(a) any assignment or mortgage of a patent or any such application, or any right in a patent or any such application;

(b) any assent relating to any patent or any such application or right, shall be void unless it is in writing and is signed by or on behalf of the parties to the transaction (or, in the case of an assent or other transaction by a personal representative, by or on behalf of the personal representative) or in the case of a body corporate is so signed or is under the seal of that body.

(7) An assignment of a patent or any such application or a share in it, and an exclusive licence granted under any patent or any such application, may confer on the assignee or licensee the right of the assignor or licensor to bring proceedings by virtue of section 67 or 76 for a previous infringement or to bring the proceedings under section 63 for a previous act.

Register of
Patents.

42. (1) There shall be kept at the Registry a Register of Patents which shall comply with the regulations made by virtue of this section and shall be kept in accordance with such regulations.

(2) Without prejudice to any other provisions of this Order or the regulations, the regulations may make provision with respect to the following matters, including provision imposing requirements as to any of those matters —

(a) the registration of patents and of published applications for patents;

(b) the registration of transactions, instruments or events affecting rights in or under patents and applications;

(c) the furnishing to the Registrar of any prescribed documents or description of documents in connection with any matter which is required to be registered;

(d) the correction of errors in the Register and in any documents filed at the Registry in connection with registration; and

(e) the publication and advertisement of anything done under this Order or the regulations in relation to the Register.

(3) Notwithstanding anything in subsection(2)(b), no notice of any trust, whether express, implied or constructive, shall be entered in the Register and the Registrar shall not be affected by any such notice.

(4) The Register need not be kept in documentary form.

(5) Subject to the regulations, the public shall have a right to inspect the Register at the Registry at all convenient times.

(6) Any person who applies for a certified copy of an entry in the Register or a certified extract from the Register shall be entitled to obtain such a copy or extract on payment of a fee prescribed in relation to certified copies and extracts; and the regulations may provide that any person who applies for an uncertified copy or extract shall be entitled to such a copy or extract on payment of a fee prescribed in relation to uncertified copies and extracts.

(7) Applications under subsection (6) or the regulations made by virtue of that subsection shall be made in such manner as may be prescribed.

(8) In relation to any portion of the Register kept otherwise than in documentary form —

(a) the right of inspection conferred by subsection (5) is a right to inspect the material on the Register; and

(b) the right to a copy or extract conferred by subsection (6) or the regulations is a right to a copy or extract in a form in which it can be taken away and in which it is visible and legible.

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

Effect of
registration,
etc., on rights
in patents.

(a) the earlier transaction, instrument or event was not registered;

(b) in the case of any application which has not been published, notice of the earlier transaction, instrument or event had not been given to the Registrar; and

(c) in any case, the person claiming under the later transaction, instrument or event did not know of the earlier transaction, instrument or event.

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

(3) This section shall apply to the following transactions, instruments and events —

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

(b) the mortgage of a patent or patent application;

(c) the grant or assignment of a licence or sub-licence, or mortgage of a licence or sub-licence, under a patent or patent application;

(d) the death of the proprietor or one of the proprietors of any such patent or patent application or any person having a right in or under a patent or patent application and the vesting by an assent of personal representatives of a patent, patent application or any such right; and

(e) any order or directions of a court or other competent authority —

- (i) transferring a patent or patent application or any right in or under it to any person; or
- (ii) that a patent application should proceed in the name of any person,

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

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

Rectification of Register.

44. (1) The court may, on the application of any person aggrieved, order the Register to be rectified by the making, or the variation or deletion, of any entry in it.

(2) In proceedings under this section the court may determine any question which may be necessary or expedient to decide in connection with the rectification of the Register.

Evidence of Register, documents, etc.

45. (1) The Register shall be prima facie evidence of anything required or authorised by this Order or the regulations to be registered.

(2) A certificate purporting to be signed by the Registrar and certifying that any entry which he is authorised by this Order or regulations to make has or has not been made, or that any other thing which he is so authorised to do has or has not been done, shall be prima facie evidence of the matter so certified.

(3) Each of the following, that is to say —

(a) a copy of an entry in the Register or an extract from the Register which is supplied under section 42(6);

(b) a copy of any document kept in the Registry or an extract from any such document; or

(c) any specification of a patent or any application for a patent which has been published,

which purports to be a certified copy or a certified extract shall be admitted in evidence without further proof and without production of the original.

(4) In this section, "certified copy" and "certified extract" mean a copy and an extract certified by the Registrar and sealed with the seal of the Registry.

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

Co-ownership of patents and applications for patents.

(2) Where two or more persons are proprietors of a patent, then, subject to this section and subject to any agreement to the contrary —

(a) each of them shall be entitled, by himself or his agents, to do in respect of the invention, for his own benefit and without the consent of or the need to account to the other or others, any act which would, apart from this subsection and sections 58, amount to an infringement of the patent; and

(b) any such act shall not amount to an infringement of the patent.

(3) Subject to section 47 and to any agreement for the time being in force, where two or more persons are proprietors of a patent, one of them shall not without the consent of the other or others grant a licence under the patent or assign or mortgage a share in the patent.

(4) Subject to section 47, where two or more persons are proprietors of a patent, anyone else may supply one of those persons with the means, relating to an essential element of the invention, for putting the invention into effect, and the supply of those means by virtue of this subsection shall not amount to an infringement of the patent.

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

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

(7) This section shall have effect in relation to an application for a patent which is filed as it has effect in relation to a patent and —

(a) references to a patent and a patent being granted shall accordingly include references respectively to any such application and to the application being filed; and

(b) the reference in subsection (5) to a patented product shall be construed accordingly.

Determination
of right to
patent or
application for
a patent.

47. (1) Where co-proprietors of a patent granted or to be granted fail to consent to —

(a) grant a licence under such patent or patent to be granted;

(b) assign or mortgage a share in such patent or patent to be granted, then any of the co-proprietors may refer to the Registrar the question whether, by operation of law or otherwise, any right in or under the patent granted or to be granted under this Order for an invention should be transferred or granted to any other person, and the Registrar shall determine the question and make such order as he thinks fit to give effect to his determination.

(2) After a patent has been granted for an invention, any person (not being a proprietor of the patent) claiming a proprietary interest in or under the patent may refer to the court the question whether any right in or under the patent should be transferred or granted to any other person or persons and the court shall determine the question and make such order as it thinks fit to give effect to its determination including an order that the person by whom the reference was made or his successor in title may, subject to section 84, make a new application for a patent.

(3) Where the court finds on a reference under subsection (2) that the patent was granted to a person not entitled to be granted that patent and where in proceedings commenced under section 80(1)(b) the court orders the conditional or unconditional revocation of the patent on that ground, the court may order that the person by whom the application for revocation was made or his successor in title may, subject to section 84, make a new application for a patent —

(a) in the case of unconditional revocation, for the whole of the matter comprised in the specification of that patent; and

(b) in the case of conditional revocation, for the matter which in the opinion of the court should be excluded from that specification by amendment under section 83,

and where such a new application is made, it shall be treated as having been filed on the date of filing the application for the patent to which the reference relates.

(4) No order shall be made under subsection (2) or (3) if the reference under subsection (2) was made after the end of the period of 2 years beginning with the date of the grant, unless it is shown that any person registered as a proprietor of the patent knew at the time of the grant or, as the case may be, of the transfer of the patent to him that he was not entitled to the patent.

(5) An order under this section shall not be so made as to affect the mutual rights or obligations of trustees or of the personal representatives of a deceased person, or their rights or obligations as such.

(6) On any reference under this section, no order shall be made unless notice of the reference is given to all persons registered as proprietor of the patent granted or to be granted or as having a right in or under the patent granted or to be granted, except those who are parties to the reference.

(7) Where an order is made under subsection (2) or (3) that a new application may be made, the new application shall be made within the prescribed period.

(8) The person referring a question relating to an invention under subsection (1) may by agreement with the other co-proprietors of the patent granted or to be granted, refer the question to the court and the court shall determine the question and may make such order as it thinks fit to give effect to the determination.

(9) If it appears to the Registrar on a reference of a question under subsection (1) that the question involves matters which would more properly be determined by the court, he may decline to deal with it and, without prejudice to the court's jurisdiction to determine such question and make a declaration, the court shall have jurisdiction to do so.

48. (1) Where an order is made under section 47 that an application for a patent or a patent shall be transferred from any person or persons (the old proprietor or proprietors) to one or more persons (whether or not including an old proprietor) then, except in a case falling within subsection (2) or (3), any licences or other rights granted or created by the old proprietor or proprietors shall, subject to section 43 and to the provisions of the order, continue in force and be treated as granted by the person or persons to whom the application for the patent or the patent is ordered to be transferred (the new proprietor or proprietors).

Effect of
transfer of
patent or patent
application
under
section 47.

(2) Where an order is so made that an application for a patent or a patent shall be transferred from the old proprietor or proprietors to one or more persons none of whom was an old proprietor (on the ground that the application for the patent was made by, or the patent was granted to, a person not entitled to make the application or be granted the patent, as the case may be), any licences or other rights in or under the application for the patent or the patent shall, subject to the provisions of the order and subsection (3), lapse on the registration of that person or those persons as the new proprietor or proprietors of the patent.

(3) Where an order is so made that an application for a patent or a patent shall be transferred as mentioned in subsection (2) or that a person

other than an old proprietor may make a new application for a patent, the Registrar shall notify the person or persons registered as proprietor or proprietors of the patent and their licensees (if any) of whom he is aware, of the making of the order, and where before the commencement of the proceedings in which the order is made, the old proprietor or proprietors or a licensee of the application for the patent or the patent, acting in good faith, worked the invention in question in Brunei Darussalam or made effective and serious preparations to do so, the old proprietor or proprietors or the licensee shall, on making a request to the new proprietor or proprietors within the prescribed period, be entitled to be granted a non-exclusive licence to continue working or, as the case may be, to work the invention, so far as it is the subject of the new application.

(4) Any such licence shall be granted for a reasonable period and on reasonable terms.

(5) The new proprietor or proprietors of the patent or any person claiming that he is entitled to be granted any such licence may refer to the court the question whether that person is so entitled and whether any such period or terms are reasonable, and the court shall determine the question and may, if it considers it appropriate, order the grant of such a licence.

PART IX

RIGHTS CONFERRED

Prevention of
direct working
of invention.

49. A patent while it is in force shall confer on its proprietor the right to prevent all third parties not having his consent from doing all or any of the acts following —

(a) where the subject matter of the patent is a product, the acts of making, using, offering for disposal, disposing of, or importing for these purposes that product or keeping it whether for disposal or otherwise;

(b) where the subject matter of the patent is a process, the act of using the process, and the acts of using, offering for disposal, disposing of, or importing for these purposes at least the product obtained directly by that process or keeping such product whether for disposal or otherwise.

Prevention of
indirect
working of
invention.

50. (1) A patent while it is in force shall also confer on its proprietor the right to prevent all third parties not having his consent from supplying or offering to supply in Brunei Darussalam a person, other than a party entitled to work the patented invention, with any of the means, relating to an essential element of that invention, for putting the invention into effect, when the third party knows, or it is obvious in the circumstances

to a reasonable person, that those means are suitable for putting, and are intended to put, the invention into effect in Brunei Darussalam.

(2) Subsection (1) shall not apply to the supply or offer of a staple commercial product unless the supply or offer is made for the purpose of inducing the third party supplied or, as the case may be, the third party to whom the offer is made to do an act which constitutes an infringement of the patent.

(3) For the purposes of this Part, "staple commercial product" means a generally available raw product or commodity of commerce suitable for uses of which at least one is non-infringing.

PART X

CONTRACTS AS TO PATENTED PRODUCTS

51. (1) Subject to this section, any condition or term of a contract for the supply of a patented product or of a licence to work a patented invention, or of a contract relating to any such supply or licence, shall be void in so far it purports —

Avoidance of
certain
restrictive
conditions.

(a) in the case of a contract for supply, to require the person supplied to acquire from the supplier, or his nominee, or prohibit him from acquiring from any specified person, or from acquiring except from the supplier or his nominee, anything other than the patented product;

(b) in the case of a licence to work a patented invention, to require the licensee to acquire from the licensor or his nominee, or prohibit him from acquiring from any specified person, or from acquiring except from the licensor or his nominee, anything other than the product which is the patented invention or (if it is a process) other than any product obtained directly by means of the process or to which the process has been applied;

(c) in either case, to prohibit the person supplied or the licensee from using articles (whether patented products or not) which are not supplied by, or any patented process which does not belong to, the supplier or licensor, or his nominee, or to restrict the right of the person supplied or the licensee to use any such articles or process.

(2) In proceedings against any person for infringement of a patent, it shall be a defence to prove that at the time of the infringement there was in force a contract relating to the patent made by or with the consent of the plaintiff or a licence under the patent granted by him or with his consent and containing in either case a condition or term void by virtue of this section.

(3) A condition or term of a contract or licence shall not be void by virtue of this section if —

(a) at the time of the making of the contract or granting of the licence, the supplier or licensor was willing to supply the product, or grant a licence to work the invention, as the case may be, to the person supplied or the licensee, on reasonable terms specified in the contract or licence and without any such condition or term as is mentioned in subsection (1); and

(b) the person supplied or the licensee is entitled under the contract or licence to relieve himself of his liability to observe the condition or term on giving to the other party 3 months notice in writing, and subject to payment to that other party of such compensation (being, in the case of a contract to supply, a lump sum or rent for the residue of the term of the contract and, in the case of a licence, a royalty for the residue of the term of the licence) as may be determined by an arbitrator appointed by the Attorney General.

(4) If in any proceeding it is alleged that any condition or term of a contract or licence is void by virtue of this section, it shall lie on the supplier or licensor to prove the matters set out in subsection (3)(a).

(5) A condition or term of a contract or licence shall not be void by virtue of this section by reason only that it prohibits any person from selling goods other than those supplied by a specific person or, in the case of a contract for the hiring of or licence to use a patented product, that it reserves to the bailor or licensor, or his nominee, the right to supply such new parts of the patented product as may be required to put or keep it in repair.

Determination
of parts
of certain
contracts.

52. (1) Any contract for the supply of a patented product or licence to work a patented invention, or contract relating to any such supply or licence, may at any time after the patent or all the patents by which the product or invention was protected at the time of the making of the contract or granting of the licence has or have ceased to be in force, and notwithstanding anything to the contrary in the contract or licence or in any other contract, be determined, to the extent (and only to the extent) that the contract or licence relates to the product or invention, by either party on giving 3 months notice in writing to the other party.

(2) In subsection (1), "patented product" and "patented invention" include respectively a product and an invention which is the subject of an application for a patent, and that subsection shall apply in relation to a patent by which any such product or invention was protected and which was granted after the time of the making of the contract or granting of the licence, on an application which had been filed before that time, as it applies to a patent in force at that time.

(3) If, on an application under this section made by either party to a contract or licence falling within subsection (1), the court is satisfied that, in consequence of the patent or patents ceasing to be in force, it would be unjust to require the applicant to continue to comply with all the terms and conditions of the contract or licence, it may make such order varying those terms or conditions as, having regard to all the circumstances of the case, it thinks just as between the parties.

(4) Without prejudice to any other right of recovery, nothing in subsection (1) shall be taken to entitle any person to recover property let under a hire purchase agreement made in accordance with the Contracts Act, the Emergency (Sale of Goods) Order, 1994 or any law in Brunei Darussalam relating to hire purchase.

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(5) This section shall apply to contracts and licences whether made before or after the appointed day.

(6) This section shall be without prejudice to any rule of law relating to the frustration of contracts and any right of determining a contract or licence exercisable apart from this section.

PART XI

LICENCES OF RIGHT AND COMPULSORY LICENCES

53. (1) At any time after the grant of a patent its proprietor may apply to the Registrar for an entry to be made in the Register to the effect that licences under the patent are to be available as of right.

Licences of right.

(2) Where an application under subsection (1) is made, the Registrar shall give notice of the application to any person registered as having a right in or under the patent and, if satisfied that the proprietor of the patent is not precluded by contract from granting licences under the patent, shall make that entry.

(3) Where an entry under subsection (2) is made in respect of a patent —

(a) any person shall, at any time after the entry is made, be entitled as of right to a licence under the patent on such terms as may be settled by agreement or, in default of agreement, by the Registrar on the application of the proprietor of the patent or the person requiring the licence;

(b) the Registrar may, on the application of the holder of any licence granted under the patent before the entry was made, order the licence to be exchanged for a licence of right on terms so settled;

(c) if in proceedings for infringement of the patent the defendant undertakes to take a licence on such terms, no injunction shall be granted against him and the amount (if any) recoverable against him by way of damages shall not exceed twice the amount which would have been payable by him as licensee if such a licence on those terms had been granted before the earliest infringement;

(d) the renewal fee payable in respect of the patent after the date of the entry shall be half the fee which would be payable if the entry had not been made.

(4) An undertaking under subsection (3)(c) may be given at any time before final order in the proceedings, without any admission of liability.

(5) The licensee under a licence of right may (unless, in the case of a licence the terms of which are settled by agreement, the licence otherwise expressly provides) request the proprietor of the patent to take proceedings to prevent any infringement of the patent; and if the proprietor refuses or neglects to do so within 2 months after being so requested, the licensee may institute proceedings for the infringement in his own name as if he were the proprietor, making the proprietor a defendant.

(6) A proprietor so added as defendant shall not be liable for any costs or expenses unless he enters an appearance and takes part in the proceedings.

Cancellation of
entry made
under
section 53.

54. (1) At any time after an entry has been made under section 53 in respect of a patent, the proprietor of the patent may apply to the Registrar for cancellation of the entry.

(2) Where an application under subsection (1) is made and the balance of all renewal fees which would have been payable if the entry had not been made has been paid within the prescribed period, the Registrar may cancel the entry if satisfied that there is no existing licence under the patent or that all licensees under the patent consent to the application.

(3) Within the prescribed period after an entry had been made under section 53 in respect of a patent, any person who claims that the proprietor of the patent is, and was at the time of the entry, precluded by a contract in which the claimant is interested from granting licences under the patent may apply to the Registrar for cancellation of the entry.

(4) Where the Registrar is satisfied, on an application under subsection (3), that the proprietor of the patent is and was so precluded, he shall cancel the entry provided that the proprietor pays within the

prescribed period, a sum equal to the balance of all renewal fees which would have been payable if the entry had not been made, and the patent shall cease to have effect at the expiration of that period if that sum is not so paid.

(5) Where an entry is cancelled under this section, the rights and liabilities of the proprietor of the patent shall after the cancellation be the same as if the entry had not been made.

(6) Where an application has been made under this section —

(a) in the case of an application under subsection (1), any person; and

(b) in the case of an application under subsection (3), the proprietor of the patent,

may within the prescribed period give notice to the Registrar of opposition to the cancellation; and the Registrar shall, in considering the application, determine whether the opposition is justified.

55. (1) At any time after the expiration of 3 years from the date of the grant of a patent or 4 years from the date of filing of the patent application, whichever is the later, any person interested may apply to the court for the grant of a licence under the patent upon any of the grounds specified in subsection (2).

Compulsory
licences.

(2) The grounds upon which a licence may be granted under this section are that the market in Brunei Darussalam for the patented invention is not being supplied —

(a) due to the failure to work or, to work to a sufficient extent, the patented invention; or

(b) on reasonable terms,

by the proprietor of the patent.

(3) Subject to this section, if the court is satisfied that either of the grounds referred to in subsection (2) is established, the court may make an order for the grant of a licence in accordance with the application upon such terms as the court thinks fit.

(4) A licence granted under this section —

(a) shall be non-exclusive;

(b) may not be assigned otherwise than in connection with that part of the enterprise or the goodwill of the business in which the patented invention is used;

(c) may only authorise use of the patented invention predominantly for the supply of the market in Brunei Darussalam; and

(d) shall be limited in the scope and duration of the use of the patented invention to the purpose for which it is to be authorised.

(5) Any licence granted under this section may, on the application of any interested party, be terminated by the court where the court is satisfied that the ground upon which the licence was granted has ceased to exist and is, in the opinion of the court, unlikely to recur, provided that the legitimate interests of the licensee are not likely to be adversely affected by the revocation.

(6) Where a licence is granted under this section to any person, that person shall pay such remuneration to the proprietor of the patent as may be agreed, or as may be determined by a method agreed, between that person and the proprietor of the patent or, in default of agreement, as is determined by the court on the application of that person or the proprietor of the patent.

(7) No licence shall be granted under this section —

(a) unless it is established that within a reasonable period of time, the applicant for the grant of the licence has been unable after reasonable efforts to obtain a licence on reasonable terms and conditions from the proprietor of the patent; or

(b) if the application for a licence under this section is in connection with a patented invention which deals with a layout design, except to remedy a practice which is determined by the court to be anti-competitive.

(8) The proprietor of a patent ("the second patent") may apply to the court for the grant of a licence under another patent ("the first patent") on the ground that the second patent cannot be worked without his infringing the first patent, and if the court is satisfied that —

(a) the ground is established; and

(b) the invention claimed in the second patent involves an important technical advance of considerable economic significance in relation to the invention claimed in the first patent,

the court may make an order for the grant of a licence in accordance with the application, upon such terms as it thinks fit and insofar as it is necessary to work the invention claimed in the second patent.

(9) Where the court makes an order under subsection (8) the proprietor of the first patent shall be entitled to an order, if he so requires, for the grant of a cross-licence on reasonable terms to work the invention claimed in the second patent.

(10) The licence granted under subsection (8) may not be assigned except with the assignment of the second patent.

(11) Subsections (4)(c) and (7)(a) shall not prevent the court from making an order for the grant of a licence to work an invention claimed in a patent against the wishes of the proprietor of the patent if the court is satisfied that the grant of the licence is for the purpose of remedying a practice which it considers to be anti-competitive.

(12) For the purposes of this Part,

(a) "layout design" means the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and some or all of the interconnections, of an integrated circuit; and includes a three-dimensional disposition prepared for an integrated circuit intended for manufacture; and

(b) "integrated circuit" means a circuit, in its final or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in or on a piece of material and that is intended to perform an electronic function.

56. (1) The powers of the court on an application under section 55 in respect of a patent shall be exercised with a view to securing for the proprietor of the patent or other person beneficially entitled to the patent a royalty or other remuneration which is reasonable having regard to the economic value of the licence.

Exercise of
powers on
application
under
section 55.

(2) Subject to subsection (1), the court shall, in determining whether to make an order in pursuance of such an application, take account of the following matters —

(a) the nature of the invention, the time which has elapsed since the publication in the *Gazette* of a notice of the grant of the patent and the measures already taken by the proprietor of the patent or any licensee to make full use of the invention;

(b) the ability of any person to whom a licence would be granted under the order to work the invention to the public advantage; and

(c) the risks to be undertaken by that person in providing capital and working the invention if the application for an order is granted, but shall not be required to take account of matters subsequent to the making of the application.

Supplementary provisions.

57. (1) An order made by the court under section 55 shall be served on the Registrar by an appropriate officer of the court and, upon receipt of the order, the Registrar shall cause an entry to be made in the Register.

(2) The entry in the Register of an order under section 55 shall for all purposes have the same effect as an entry made under section 53.

(3) No order shall be made in pursuance of an application under section 55 or in respect of acts performed under Part XII which would be at variance with any treaty or international convention relating to patents to which Brunei Darussalam is a party.

PART XII

USE OF PATENTED INVENTIONS FOR SERVICES OF GOVERNMENT

Use of patented inventions for services of Government.

58. (1) Subject to this Part, notwithstanding anything in this Order, any Government department and any person authorised in writing by a Government department may, for the services of the Government and in accordance with this section do any of the following acts in Brunei Darussalam for the services of the Government —

(a) where the patented invention is a product, may make, use, import, obtain or keep the product;

(b) where the patented invention is a process, may use it or, in relation to any product obtained directly by means of the process, do anything mentioned in paragraph (a); and

(c) may dispose or offer to dispose of anything which was made, used, imported, obtained or kept in exercise of the powers conferred by this section and which is no longer required for the purpose for which it was made, used, imported, obtained or kept, as the case may be,

and anything done by virtue of this section shall not amount to an infringement of the patent.

(2) Any act done in relation to an invention by virtue of this section is in this section referred to as use of the invention; and "use", in relation to an invention, in sections 59 to 63 shall be construed accordingly.

(3) So far as the invention has before its priority date been duly recorded by or tried by or on behalf of a Government department otherwise than in consequence of a relevant communication made in confidence, any use of the invention by virtue of this section may be made free of any royalty or other payment to the proprietor.

(4) A person acquiring anything disposed of in the exercise of the powers conferred by this section, and any person claiming through him, may deal with it in the same manner as if the patent were held on behalf of the Government.

(5) In this section, "relevant communication", in relation to a patented invention, means a communication of the invention directly or indirectly by the proprietor of the patent or any person from whom he derives title.

59. (1) Any reference in this Part to a patented invention, in relation to any time, is a reference to an invention for which a patent has before that time been, or is subsequently, granted.

Interpretation,
etc., of
provisions
about
Government
use.

(2) In this Part, unless the context otherwise requires, "the services of the government" shall be deemed to include —

(a) the sale or supply of anything for foreign defence purposes;

(b) the supply of anything to avoid prejudice to the security or defence of Brunei Darussalam; and

(c) the supply of anything to assist in the exercise of powers and the implementation of measures during a period of national emergency or other circumstances of extreme urgency,

and "use for the services of the Government" shall be construed accordingly and is limited to public non-commercial use.

(3) In subsection (2)(a) references to a sale or supply of anything for foreign defence purposes are references to a sale or supply of the thing —

(a) to the government of any country outside Brunei Darussalam in pursuance of an agreement or arrangement between the Government and the government of that country, where the

thing is required for the defence of that country or of any other country whose government is party to any agreement or arrangement with the Government in respect of defence matters; or

(b) to the United Nations, or to the government of any country belonging to that organisation, in pursuance of an agreement or arrangement between the Government and that organisation or government, where the thing is required for any armed forces operating in pursuance of a resolution of that organisation or any organ of that organisation.

Nature and scope of rights under section 58.

60. (1) The right to use a patented invention under section 58 —

(a) shall be non-exclusive;

(b) may not be assigned otherwise than in connection with that part of the enterprise or the goodwill of the business in which the patented invention is used;

(c) is, notwithstanding subsection (2) of section 59, limited to the supply of the patented invention in Brunei Darussalam by a Government department or a person authorised by a Government department under that section.

(2) The right to use a patented invention under section 58 may, on the application of any interested party, be terminated by the court, where the court is satisfied that the circumstances that gave rise to the right to use the patented invention have ceased to exist and are unlikely to recur.

(3) Except in a case to which section 64 applies, the right to use a patented invention under section 58 is subject to the Government department or the person authorised by a Government department under section 58 having first taken all reasonable steps to obtain the consent of the proprietor of the patent to the use of the patented invention on reasonable commercial terms and conditions, and having failed to obtain such consent within a reasonable period of time.

Proprietor of patent entitled to remuneration.

61. Where an act is done under section 58, the Government shall pay such remuneration to the proprietor of the patent as may be agreed, or as may be determined by a method agreed, between the Government and the proprietor having regard to the economic value of the patented invention or as may, in default of agreement, be determined by the court under section 63.

62. (1) In relation to —

Rights of third parties in respect of Government use.

(a) any use made for the services of the Government of an invention by a Government department, or a person authorised by a Government department, by virtue of section 58; or

(b) anything done for the services of the Government to the order of a Government department by the proprietor of a patent in respect of a patented invention or by the proprietor of an application in respect of an invention for which an application for a patent has been filed and is still pending.

the provisions of any licence, assignment or agreement to which this subsection applies shall, subject to sections 60 to 61, be of no effect so far as those provisions restrict or regulate the working of the invention, or the use of any model, document or information relating to it, or provide for the making of payments in respect of, or calculated by reference to, such working or use; and the reproduction or publication of any model or document in connection with the said working or use shall not be deemed to be an infringement of any copyright or design right subsisting in the model or document.

(2) Subsection (1) shall apply to a licence, assignment or agreement which is made, whether before or after the appointed day, between (on the one hand) any person who is a proprietor of or an applicant for the patent, or anyone who derives title from any such person or from whom such person derives title, and (on the other hand) any person other than a Government department.

(3) Where an exclusive licence granted otherwise than for royalties or other benefits determined by reference to the working of the invention is in force under the patent or application, then —

(a) in relation to anything done in respect of the invention which, but for this section and section 58, would constitute an infringement of the rights of the licensee, section 63 shall have effect as if for the reference to the proprietor of the patent there were substituted a reference to the licensee; and

(b) in relation to anything done in respect of the invention by the licensee by virtue of an authority given under section 58, that section shall have effect as if section 63 were omitted.

(4) Subject to subsection (3), where a patent, or the right to the grant of a patent, has been assigned to the proprietor of the patent or application in consideration of royalties or other benefits determined by reference to the working of the invention, then —

(a) in relation to any use of the invention by virtue of section 58, section 63 shall have effect as if the reference to the proprietor of the patent included a reference to the assignor, and any sum payable by virtue of that subsection shall be divided between the proprietor of the patent or application and the assignor in such proportion as may be agreed on by them or as may in default of agreement be determined by the court under that section; and

(b) in relation to any act done in respect of the invention for the services of the Government by the proprietor of the patent or application to the order of a Government department, section 63 shall have effect as if the act were use made by virtue of an authority given under that section.

(5) Where section 63 applies to any use of a patented invention and a person holds an exclusive licence under the patent or application (other than such a licence as is mentioned in subsection (3)) authorising him to work the invention, then subsections (7) and (8) shall apply.

(6) In subsections (7) and (8), "the section 63 payment" means such payment, if any, as the proprietor of the patent or application and the Government department agree under section 63(1), or the court determines under that section, should be made by the department to the proprietor in respect of the use of the patented invention.

(7) The licensee shall be entitled to recover from the proprietor of the patent or applicant for a patent such part, if any, of the section 63 payment as may be agreed on by them or as may, in default of agreement, be determined by the court under section 63 to be just having regard to any expenditure incurred by the licensee —

(a) in developing the invention; or

(b) in making payments to the proprietor in consideration of the licence, other than royalties or other payments determined by reference to the use of the invention.

(8) Any agreement by the proprietor of the patent or application and the Government department under section 63(1) as to the amount of the section 63 payment shall be of no effect unless the licensee consents to the agreement; and any determination by the court under section 63(1) as to the amount of that payment shall be of no effect unless the licensee has been informed of the reference to the court and is given an opportunity to appear.

(9) Where any model, document or information relating to an invention is used in connection with any use of the invention which falls within subsection (1)(a), or with anything done in respect of the invention

which falls within subsection (1)(b), section 63(1) shall (whether or not it applies to any such use of the patented invention) apply to the use of the model, document or information as if for the reference in it to the proprietor of the patent there were substituted a reference to the person entitled to the benefit of any provision of an agreement which is rendered inoperative by this section in relation to that use; and in section 58 the references to terms for the use of an invention shall be construed accordingly.

(10) Nothing in this section shall be construed as authorising the disclosure to a Government department or any other person of any model, document or information to the use of which this section applies in contravention of any such licence, assignment or agreement as is mentioned in this section.

63. (1) Any dispute as to the exercise by a Government department or a person authorised by a Government department of the powers conferred by section 58 or as to the terms for the use of an invention for the services of the Government thereunder may be referred to the court by either party to the dispute after a patent has been granted for the invention.

References of
disputes as to
Government
use.

(2) In determining any dispute referred to the court under this section, the court shall have regard to —

(a) any benefit or compensation which the proprietor of the patent or other person beneficially entitled to the patent or any person from whom he derives title may have received, or may be entitled to receive, directly or indirectly from any Government department or any person authorised by a Government department in respect of the patented invention; and

(b) the need to ensure that the proprietor of the patent or other person beneficially entitled to the patent shall receive reasonable remuneration having regard to the economic value of the invention claimed in the patent.

(3) If in such proceedings any question arises as to whether a patented invention has been recorded or tried by or on behalf of a Government department, and the disclosure of any document recording the invention, or of any evidence of the trial thereof, would in the opinion of the Government department be prejudicial to the public interest, the disclosure may be made confidentially to counsel for the other party or to an independent expert mutually agreed upon.

(4) If the validity of a patent is put in issue in proceedings under this section and it is found that the patent is only partially valid, the court may, subject to subsection (5), grant relief to the proprietor of the patent in respect of that part of the patent which is found to be valid and to have been used for the services of the Government.

(5) Where in any such proceedings it is found that a patent is only partially valid, the court shall not grant relief by way of costs or expenses except where the proprietor of the patent proves that the specification of the patent was framed in good faith and with reasonable skill and knowledge, and in that event the court may grant relief in respect of that part of the patent which is valid and has been so used, subject to the discretion of the court as to costs and expenses.

(6) As a condition of any such relief, the court may direct that the specification of the patent shall be amended to its satisfaction upon an application made for that purpose under section 83, and an application may be so made accordingly, whether or not all other issues in the proceedings have been determined.

(7) In any proceedings under this section, the court may at any time order the whole proceedings or any question or issue of fact arising in them to be referred, on such terms as the court may direct, to an arbitrator; and references to the court in this section shall be construed accordingly.

(8) One of the two or more joint proprietors of a patent or application for a patent may without the concurrence of the others refer a dispute to the court under this section, but shall not do so unless the others are made parties to the proceedings; but any of the others if made a defendant shall not be liable for any costs or expenses unless he enters an appearance and takes part in the proceedings.

(9) On a reference under this section, the court may refuse to grant relief by way of compensation in respect of the use of an invention for the services of the Government during any further period specified under section 36(3), but before the payment of the renewal fee and any additional fee prescribed for the purposes of that section.

(10) Where an amendment of the specification of a patent has been allowed under any of the provisions of this Order, the court shall not grant relief by way of compensation under this section in respect of any such use before the decision to allow the amendment unless the court is satisfied that the specification of the patent as published was framed in good faith and with reasonable skill and knowledge.

(11) In considering the amount of any compensation for the use of an invention for the services of the Government after publication of an application for a patent for the invention and before such a patent is granted, the court shall consider whether or not it would have been reasonable to expect, from a consideration of the application as published under section 27, that a patent would be granted conferring on the proprietor of the patent protection for an act of the same description as that found to constitute that use, and if the court finds that it would not

have been reasonable, it shall reduce the compensation to such amount as it thinks just.

(12) Where by virtue of a transaction, instrument or event to which section 43 applies a person becomes the proprietor or one of the proprietors or an exclusive licensee of a patent ("the new proprietor or licensee") and a Government department or a person authorised by a Government department subsequently makes use of the patented invention under section 58, the new proprietor or licensee shall not be entitled to any compensation under subsection (1) (as it stands or as modified by section 62(3)) in respect of a subsequent use of the invention before the transaction, instrument or event is registered unless —

(a) the transaction, instrument or event is registered within the period of 6 months beginning with its date; or

(b) the Registrar is satisfied that it was not practicable to register the transaction, instrument or event before the end of that period and that it was registered as soon as practicable thereafter.

(13) Subsection (1) is without prejudice to any rule of law relating to the confidentiality of information.

64. (1) Subject to this Part, the powers exercisable in relation to an invention by a Government department or a person authorised by a Government department under section 58 shall include power to use the patented invention for any purpose which appears to the department necessary or expedient —

Special provisions as to Government use during emergency.

(a) to avoid prejudice to the security or defence of Brunei Darussalam or for the efficient prosecution of any war in which Brunei Darussalam may be engaged;

(b) to assist in the exercise of powers and the implementation of measures during a period of national emergency or other circumstances of extreme urgency; or

(c) for public non-commercial purposes,

and any reference in this Order to the services of the Government shall, as respects any period of national emergency, include a reference to those purposes.

(2) In this section, the use of a patented invention includes, in addition to any act constituting such use by virtue of section 58, any act which would, apart from that section and this section, amount to an infringement of the patent or, as the case may be, give rise to a right under section 76 to bring proceedings in respect of the application, and any

reference in this Order to "use for the services of the Government" shall, as respects any period of national emergency, be construed accordingly.

(3) In this section, "period of national emergency" means any period beginning with such date as may be declared by the Attorney General by order published in the *Gazette* to be the commencement, and ending with such date as may be so declared to be the termination, of a period of national emergency for the purposes of this section.

Duty to inform
proprietor of
patent.

65. (1) Where any use of a patented invention is made by or with the authority of a Government department under section 64 in situations of national emergency or other circumstances of extreme urgency, the Government department shall, as soon as practicable, inform the proprietor of the patent of such use and in the case of public non-commercial use, where the Government department or person authorised by the Government department, without making a search of the Brunei Darussalam patent records, knows or has demonstrable grounds to know that a patented invention is or will be used by or for the government, the Government department shall inform the proprietor of the patent promptly of such use.

(2) Where any use of a patented invention is made by or with the authority of a Government department under section 58, the Government department shall as soon as reasonably practicable after use of the patented invention has begun, notify and furnish the proprietor of the patent with such information as to the extent of the use as the proprietor may from time to time reasonably require.

(3) Nothing in subsection (1) or (2) shall require the Government department to notify or disclose information to the proprietor of the patent if to do so would, or might reasonably be expected to, prejudice the security or defence of Brunei Darussalam.

PART XIII

INFRINGEMENT OF PATENTS

Meaning of
infringement.

66. (1) Subject to the provisions of this Order, a person infringes a patent for an invention if, but only if, while the patent is in force, he does in Brunei Darussalam in relation to the invention and without the consent of the proprietor of the patent, any act or thing which would contravene any of the rights of the proprietor conferred under section 49 or 50.

(2) An act which, apart from this subsection, would constitute an infringement of a patent for an invention shall not do so if —

(a) it is done privately and for purposes which are not commercial;

(b) it is done for experimental purposes relating to the subject-matter of the invention;

(c) it consists of the extemporaneous preparation of a medicine for an individual in accordance with a prescription given by a registered medical or dental practitioner or consists of dealing with a medicine so prepared;

(d) it consists of the use of a product or process in the body or operation of a relevant aircraft, hovercraft or vehicle which has temporarily or accidentally entered or is crossing Brunei Darussalam (including the air space above it and its territorial waters) or the use of accessories for such a relevant aircraft, hovercraft or vehicle;

(e) it consists of the use, exclusively for the needs of a relevant ship, of a product or process in the body of the ship or in its machinery, tackle, apparatus or other accessories, in a case where the ship has temporarily or accidentally entered the territorial waters of Brunei Darussalam;

(f) it is an act specified in Article 27 of the Convention on International Civil Aviation, where such act concerns the aircraft of countries, other than Brunei Darussalam, benefiting from the provisions of that Article; or

(g) it consists of the import, use, disposal or offer to dispose of, of any patented product, or of any product obtained by means of a patented process or to which a patented process has been applied, which is produced by or with the consent (conditional or otherwise) of the proprietor of the patent or any person licensed by him, and for this purpose "patent" includes a patent granted in any country outside Brunei Darussalam in respect of the same or substantially the same invention as that for which a patent is granted under this Order and "patented product", "patented process" and "licensed" shall be construed accordingly.

(3) In this section, "relevant ship" and "relevant aircraft, hovercraft or vehicle" mean respectively a ship and an aircraft, hovercraft or vehicle registered in, or belonging to, any convention country other than Brunei Darussalam.

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

Proceedings for infringement of patent.

(a) an injunction restraining the defendant from any apprehended act of infringement;

(b) an order for him to deliver up or destroy any patented product in relation to which the patent is infringed or any article in which that product is inextricably comprised or any implement the predominant use of which has been in the creation of the infringing product;

(c) damages in respect of the infringement;

(d) an account of the profits derived by him from the infringement; and

(e) a declaration that the patent is valid and has been infringed by him.

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

(3) In this Order, unless the context otherwise requires —

(a) any reference to a plaintiff includes a reference to the proprietor of the patent; and

(b) any reference to a defendant includes a reference to any other party to the reference.

(4) Subject to this Part, in determining whether or not to grant any kind of relief claimed under this section and the extent of the relief granted, the court shall apply the principles applied by the court in relation to that kind of relief immediately before the appointed day.

Reversal of
burden of proof.

68. (1) In any proceedings for the infringement of a patent, where the subject matter of the patent is a process for obtaining a new product, the burden of proving that a product is not made by the process shall be on the alleged infringer if the product is new or a substantial likelihood exists that the product is made by the process and the proprietor of the patent has been unable through reasonable efforts to determine the process actually used.

(2) In considering whether a party has discharged the burden imposed upon him by this section, the court shall not require him to disclose any manufacturing or commercial secrets if it appears to the court that it would be unreasonable to do so.

69. (1) In proceedings for infringement of a patent, damages shall not be awarded and no order shall be made for an account of profits against a defendant who proves that at the date of the infringement he was not aware, and had no reasonable grounds for supposing, that the patent existed; and a person shall not be taken to have been so aware or to have had reasonable grounds for so supposing by reason only of the application to a product of the word "patent" or "patented", or any word or words expressing or implying that a patent has been obtained for the product, unless the number of the patent accompanied the word or words.

Restrictions on
recovery of
damages for
infringement.

(2) In proceedings for infringement of a patent the court may, if it thinks fit, refuse to award any damages or make any such order in respect of an infringement committed during any further period specified under section 36(3), but before the payment of the renewal fee and any additional fee prescribed for the purposes of that subsection.

(3) Where an amendment of the specification of a patent has been allowed under any of the provisions of this Order, no damages shall be awarded in proceedings for an infringement of the patent committed before the decision to allow the amendment unless the court is satisfied that the specification of the patent as published was framed in good faith and with reasonable skill and knowledge.

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

Relief for
infringement
of partially
valid patent.

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

(3) As a condition of relief under this section, the court may direct that the specification of the patent shall be amended to its satisfaction upon an application made for that purpose under section 83, and an application may be so made accordingly, whether or not all other issues in the proceedings have been determined.

71. (1) Where a patent is granted for an invention, a person who in Brunei Darussalam before the date of filing of the patent application or, if priority was claimed, before the priority date of the invention —

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

(a) does in good faith an act which would constitute an infringement of the patent if it were then in force; or

(b) makes in good faith effective and serious preparations to do such an act,

has the right to continue to do the act or, as the case may be, to do the act, notwithstanding the grant of the patent; but this right does not extend to granting a licence to another person to do the act.

(2) If the act was done, or the preparations were made to do it, in the course of a business —

(a) in the case of an individual, that individual has —

(i) the right to assign the right to do the act or to transmit such right on death, or

(ii) the right to authorise the doing of the act by any of his partners for the time being in the business in the course of which the act was done or preparations had been made to do it;

(b) in the case of a body corporate, the right to assign the right to do the act, or transmit it on the body's dissolution.

(3) Where a product is disposed of to another in exercise of the rights conferred by subsection (1) or (2), that other and any person claiming through him may deal with the product in the same way as if it had been disposed of by the proprietor of the patent.

Certificate of
contested
validity of
patent.

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

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

Proceedings for
infringement by
co-owner.

73. (1) In the application of section 66 to a patent of which there are two or more joint proprietors, the reference to the proprietor shall be construed —

(a) in relation to any act, as a reference to that proprietor or those proprietors who, by virtue of section 46 or any agreement referred to in that section, is or are entitled to do that act without it amounting to an infringement; and

(b) in relation to any consent, as a reference to that proprietor or those proprietors who, by virtue of section 46 or any such agreement, is or are the proper person or persons to give the requisite consent.

(2) One of two or more joint proprietors of a patent may without the concurrence of the others bring proceedings in respect of an act alleged to infringe the patent, but shall not do so unless the others are made parties to the proceedings; but any of the others if made a defendant shall not be liable for any costs or expenses unless he enters an appearance and takes part in the proceedings.

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

Proceedings for infringement by exclusive licensee.

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

(3) In any proceedings taken by an exclusive licensee by virtue of this section, the proprietor of the patent shall be made a party to the proceedings, but if made a defendant shall not be liable for any costs or expenses unless he enters an appearance and takes part in the proceedings.

75. Where by virtue of a transaction, instrument or event to which section 43 applies a person becomes the proprietor or one of the proprietors or an exclusive licensee of a patent and the patent is subsequently infringed, the court shall not award him damages or order that he be given an account of the profits in respect of such a subsequent infringement occurring before the transaction, instrument or event is registered unless —

Effect of non-registration on infringement proceedings.

(a) the transaction, instrument or event is registered within the period of 6 months beginning with its date; or

(b) the court is satisfied that it was not practicable to register the transaction, instrument or event before the end of that period and that it was registered as soon as practicable thereafter.

Infringement of rights conferred by publication of application.

76. (1) Where an application for a patent for an invention is published, then, subject to this section, the applicant shall have, as from the publication and until the grant of the patent, the same right as he would have had, if the patent had been granted on the date of the publication of the application, to bring proceedings in the court for damages in respect of any act which would have infringed the patent; and references in sections 66 to 69 and 73 to 75 to a patent and the proprietor of a patent shall be respectively construed as including references to any such application and the applicant, and references to a patent being in force, being granted, being valid or existing shall be construed accordingly.

(2) The applicant shall be entitled to bring proceedings by virtue of this section in respect of any act only —

(a) after the patent has been granted; and

(b) if the act would, if the patent had been granted on the date of the publication of the application, have infringed not only the patent, but also the claims (as interpreted by the description and any drawings referred to in the description or claims) in the form in which they were contained in the application immediately before the preparations for its publication were completed by the Registry.

(3) Section 69(2) and (3) shall not apply to an infringement of the rights conferred by this section but in considering the amount of any damages for such an infringement, the court shall consider whether or not it would have been reasonable to expect, from a consideration of the application as published under section 27, that a patent would be granted conferring on the proprietor of the patent protection from an act of the same description as that found to infringe those rights, and if the court finds that it would not have been reasonable, it shall reduce the damages to such an amount as it thinks just.

Remedy for groundless threats of infringement proceedings.

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

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

(a) the defendant proves that the acts in respect of which proceedings were threatened constitute or, if done, would constitute an infringement of a patent; and

(b) the patent alleged to be infringed is not shown by the plaintiff to be invalid in a relevant respect.

(3) The said relief is —

(a) a declaration to the effect that the threats are unjustifiable;

(b) an injunction against the continuance of the threats; and

(c) damages in respect of any loss which the plaintiff has sustained by the threats.

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

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

(6) Nothing in this section shall render an advocate and solicitor, a registered patent agent, or any other person liable to an action under this section in respect of an act done by the advocate and solicitor or the other person in his professional capacity on behalf of a client.

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

Declaration
as to non-
infringement.

(a) that that person has applied in writing to the proprietor for a written acknowledgment to the effect of the declaration claimed, and has furnished him with full particulars in writing of the act in question; and

(b) that the proprietor has refused or failed to give any such acknowledgment.

(2) The costs of all parties in proceedings under subsection (1) shall be paid by the person commencing the proceedings unless the court otherwise orders.

PART XIV

REVOCATION OF PATENTS AND ISSUES OF VALIDITY

Information
on result of
corresponding
international
or other
applications.

79. (1) The Registrar may, on the application of any interested person and on the payment of the prescribed fee, request the proprietor of a patent to furnish to the Registrar, within such period as the Registrar may specify, prescribed information on all corresponding international applications or corresponding applications for a patent made by him or his predecessor in title at any prescribed patent office.

(2) Where the proprietor of a patent has furnished the prescribed information under subsection (1) the Registrar shall as soon as practicable send to the interested person the prescribed information so furnished or available.

(3) Where —

(a) the proprietor of a patent fails without good cause to comply with the request of the Registrar under subsection (1); or

(b) if it is found that the proprietor has furnished any information which in any material particular was false,

and it is shown that the information which should have been furnished under subsection (1) would have established that the patent was invalid or partially invalid, then the proprietor of the patent shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both.

(4) For the purpose of this section, "corresponding international application" and "corresponding application" have the same meanings as in section 29(4).

Power to revoke
patents on
application.

80. (1) Subject to the provisions of this Order, civil proceedings may be brought in the court by any person seeking an order for the revocation of a patent for an invention on (but only on) any of the following grounds —

(a) the invention is not a patentable invention;

(b) the patent was granted to a person who was not entitled to be granted that patent;

(c) the specification of the patent does not disclose the invention clearly and completely for it to be performed by a person skilled in the art;

(d) the matter disclosed in the specification of the patent extends beyond that disclosed in the application for the patent, as filed, or, if the patent was granted on a new application filed under section 47(2) or 47(3), or as mentioned in section 26(6), in the earlier application made under this Order as filed;

(e) the protection conferred by the patent has been extended by an amendment which contravenes section 84; or

(f) the patent was obtained on a misrepresentation.

(2) Where an order to revoke a patent on any of the grounds specified in subsection (1)(a), (c), (d) and (e) has been sought and, if the proprietor of the patent indicates his intention to contest the matter, the court may order the Registrar to have the patent examined and, subject to subsections (3) and (4), the Registrar shall, in the prescribed manner, cause the patent to be examined by an Examiner so as to determine whether any of those grounds exist and require the applicant to pay the prescribed examination fee.

(3) The Registrar shall not cause a patent to be examined under subsection (2) where, within the prescribed period, the person seeking the order for revocation of the patent fails to give such security for the costs or expenses of the proceedings as the Registrar may specify; in which case, the Registrar shall advise the court accordingly and the court may treat the revocation proceedings as having been abandoned.

(4) Proceedings for the revocation of a patent on the ground mentioned in subsection (1)(b) —

(a) may only be commenced by a person found by the court in an action for a declaration or found by the court on a reference under section 47, to be entitled to be granted that patent or to be granted a patent for part of the matter comprised in the specification of the patent sought to be revoked; and

(b) may not be made if that action was commenced or that reference was made after the end of the period of 2 years beginning with the date of the grant of the patent sought to be revoked, unless it is shown that any person registered as a proprietor of the patent knew at the time of the grant or of the transfer of the patent to him that he was not entitled to the patent.

(5) An order under this section may be —

(a) an order for the unconditional revocation of the patent;
or

(b) where one of the grounds mentioned in subsection (1)(a), (c), (d) and (e) has been established, but only so as to invalidate the patent to a limited extent, an order that the patent should be revoked unless within a specified time the specification is amended under section 83 to the satisfaction of the court.

(6) A decision of the court shall not estop any party to any civil proceedings in which infringement of a patent is in issue from alleging invalidity of the patent on any of the grounds referred to in subsection (1), whether or not any of the issues involved were decided in the decision.

(7) An order under this section revoking a patent shall have effect from the date of the grant of the patent.

(8) Where the person who has brought proceedings in the court seeking an order under this section for the revocation of a patent indicates that he intends to discontinue or withdraw from the proceedings, he shall pay such costs or expenses of the proceedings as the court may determine.

Registrar's
power to revoke
patents.

81. The Registrar may on his own initiative by order revoke a patent if it appears that —

(a) an invention for which a patent has been granted formed part of the state of the art by virtue only of section 14(3); or

(b) a patent in force by virtue of section 117(4) has been renewed in spite of the fact that the patent in the United Kingdom, Malaysia or Singapore, as the case may be, has been revoked,

but he shall not do so without giving the proprietor of the patent an opportunity of making any representations and, in the situation mentioned in paragraph (a), of amending the specification of the patent so as to exclude any matter which formed part of the state of the art as aforesaid without contravening section 84.

Proceedings in
which validity
of patent may
be put in issue.

82. (1) Subject to this section, the validity of a patent may be put in issue —

(a) by way of defence, in proceedings for infringement of the patent under section 67 or proceedings under section 76 for infringement of rights conferred by the publication of an application;

(b) in proceedings under section 77;

(c) in proceedings in which a declaration in relation to the patent is sought under section 78;

(d) in proceedings under section 80 for the revocation of the patent; or

(e) in proceedings under section 58 or 63.

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

(3) The only grounds on which the validity of a patent may be put in issue (whether in proceedings for revocation under section 80 or otherwise) are the grounds on which the patent may be revoked under that section.

(4) No determination shall be made in any proceedings mentioned in subsection (1) on the validity of a patent which any person puts in issue on the ground mentioned in section 80(1)(b) unless —

(a) it has been determined in entitlement proceedings commenced by that person or in the proceedings in which the validity of the patent is in issue that the patent should have been granted to him and not some other person; and

(b) except where it has been so determined in entitlement proceedings, the proceedings in which the validity of the patent is in issue are commenced before the end of the period of 2 years beginning with the date of the grant of the patent or it is shown that any person registered as a proprietor of the patent knew at the time of the grant or of the transfer of the patent to him that he was not entitled to the patent.

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

(6) In subsection (4), "entitlement proceedings", in relation to a patent, means a reference under section 47(2) on the ground that the patent was granted to a person not entitled to it or proceedings for a declaration that it was so granted.

(7) It is hereby declared that for the purposes of this Order the validity of a patent is not put in issue merely because the Registrar is considering its validity in order to decide whether to revoke it under section 81.

PART XV

AMENDMENTS OF PATENTS AND APPLICATIONS

Amendment of patent in infringement or revocation proceedings.

83. (1) In any proceedings before the court in which the validity of a patent is put in issue, the court may, subject to section 84, allow the proprietor of the patent to amend the specification of the patent in such manner, and subject to such terms as to the publication and advertisement of the proposed amendment and as to costs, expenses or otherwise, as the court thinks fit.

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

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

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

Amendments of applications and patents not to include added matter.

84. (1) An application for a patent which —

(a) is made in respect of matter disclosed in an earlier application, or in the specification of a patent which has been granted; and

(b) discloses additional matter, that is, matter extending beyond that disclosed in the earlier application made under this Order as filed,

may be filed under section 47(2) or (3), or as mentioned in section 26(6), and if made shall be invalid to the extent that it discloses the additional matter.

(2) An amendment of a specification of an application under section 31 shall be invalid to the extent that it extends the subject matter beyond that disclosed in the application as filed.

(3) An amendment of a specification of a patent under section 38(1), 81 or 83 shall be invalid to the extent that it —

(a) extends the subject matter beyond that disclosed in the application as filed; or

(b) extends the protection conferred by the patent.

PART XVI

PROVISIONS ABOUT INTERNATIONAL CONVENTIONS

85. (1) An international application for a patent (Brunei Darussalam) for which a date of filing has been accorded under the Patent Co-operation Treaty shall, subject to sections 86 and 87, be treated for the purposes of this Order as an application for a patent under this Order.

Effect of filing international application for patent.

(2) If the application, or the designation of Brunei Darussalam in it, is withdrawn or (except as mentioned in subsection (3)) deemed to be withdrawn under the Patent Co-operation Treaty, it shall be treated as withdrawn under this Order.

(3) An application shall not be treated as withdrawn under this Order if it, or the designation of Brunei Darussalam in it, is deemed to be withdrawn under the Patent Co-operation Treaty —

(a) because of an error or omission in an institution having functions under the Treaty; or

(b) because, owing to circumstances outside the applicant's control, a copy of the application was not received by the International Bureau before the end of the time limited for that purpose under the Treaty; or

(c) in such other circumstances as may be prescribed.

(4) If an international application for a patent which designates Brunei Darussalam is refused a filing date under the Patent Co-operation Treaty and the Registrar determines that the refusal was caused by an error or omission in an institution having functions under that Treaty, he may direct that the application shall be treated as an application under this Order, having such date of filing as he may direct.

(5) The Registry shall, unless any agreement is in force under subsection (6), act as a receiving Office under Article 2 of the Patent Co-operation Treaty in respect of any international application filed with it by citizens of Brunei Darussalam or persons resident in Brunei Darussalam.

(6) Subject to the approval of the Attorney General, the Registrar may make an agreement of the kind referred to in Rule 19.1(b) of the Regulations under the Patent Co-operation Treaty whereby the International Bureau or a prescribed patent office or both may, instead of the Registry, act as receiving Office in respect of international applications filed by citizens of Brunei Darussalam or persons resident in Brunei Darussalam.

(7) Unless any agreement is in force under subsection (6), the prescribed transmittal fee, in addition to the fees prescribed by the Patent Co-operation Treaty, shall be paid to the Registry by any person filing an international application under that Treaty.

(8) The Registry shall act as designated Office under Article 2 of the Patent Co-operation Treaty in respect of an international application in which Brunei Darussalam is designated for the purposes of obtaining a patent under this Order.

(9) The Registry shall act as an elected Office in respect of an international application in which Brunei Darussalam is designated as referred to in subsection (8) if the applicant elects Brunei Darussalam for the purposes of international preliminary examination under Chapter II of the Patent Co-operation Treaty.

(10) For the purpose of this section, "resident of Brunei Darussalam" has the same meaning as in section 32(4).

International
and national
phases of
application.

86. (1) The provisions of the Patent Co-operation Treaty relating to publication, search, examination and amendment, and not those of this Order, apply to an international application for a patent (Brunei Darussalam) during the international phase of the application.

(2) The international phase of the application means the period from the filing of the application in accordance with the Patent Co-operation Treaty until the national phase of the application begins.

(3) The national phase of the application begins —

(a) when the prescribed period expires, provided any necessary translation of the application into English has been filed at the Registry and the prescribed fee has been paid by the applicant; or

(b) on the applicant expressly requesting the Registrar to proceed earlier with the national phase of the application, paying the prescribed fee and filing at the Registry —

- (i) a copy of the application, if none has yet been sent to the Registry in accordance with the Patent Co-operation Treaty; and
- (ii) any necessary translation of the application into English.

(4) For the purpose of subsection (3), a "copy of the application" includes a copy published in accordance with the Patent Co-operation Treaty in a language other than that in which it was originally filed.

(5) If the prescribed period expires without the conditions mentioned in subsection (3)(a) being satisfied, the application shall be taken to be withdrawn.

(6) Where during the international phase the application is amended in accordance with the Patent Co-operation Treaty, the amendment shall be treated as made under this Order if —

(a) when the prescribed period expires, any necessary translation of the amendment into English has been filed at the Registry; or

(b) where the applicant expressly requests the Registrar to proceed earlier with the national phase of the application, there is then filed at the Registry —

- (i) a copy of the amendment, if none has yet been sent to the Registry in accordance with the Treaty; and
- (ii) any necessary translation of the amendment into English;

otherwise the amendment shall be disregarded.

(7) The Registrar shall on payment of the prescribed fee publish any translation filed at the Registry under subsection (3) or (6).

87. (1) Where an international application for a patent (Brunei Darussalam) is accorded a filing date under the Patent Co-operation Treaty —

Adaptation of provisions in relation to international application.

(a) that date or, if the application is re-dated under the Treaty to a later date, that later date shall be treated as the date of filing the application under this Order;

(b) any declaration of priority made under the Treaty shall be treated as made under section 17(2), and where in accordance with the Treaty any extra days are allowed, the period of 12 months

specified in section 17(2) shall be treated as altered accordingly; and

(c) any statement of the name of the inventor under the Treaty shall be treated as a statement filed under section 24(2).

(2) If the application, not having been published under this Order, is published in accordance with the Patent Co-operation Treaty it shall be treated, for purposes other than those mentioned in subsection (3), as published under section 27 when the conditions mentioned in section 86(3)(a) are complied with.

(3) For the purposes of section 58 (use of invention for service of the Government) and section 76 (infringement of rights conferred by publication) the application, not having been published under this Order, shall be treated as published under section 27 —

(a) if it is published in accordance with the Patent Co-operation Treaty in English, on its being so published; and

(b) if it is so published in a language other than English —

(i) on the publication of a translation of the application in accordance with section 86(7); or

(ii) on the service by the applicant of a translation into English of the specification of the application on the Government department concerned or, as the case may be, on the person committing the infringing act.

(4) The reference in subsection (3)(b)(ii) to the service of a translation on a Government department or other person is to it being sent by post or delivered to that department or person.

(5) During the international phase of the application, section 47 does not apply (determination of questions of entitlement in relation to application under this Order); but after the end of the international phase, that section shall apply.

Evidence of
Patent Co-
operation
Treaty and its
instruments.

88. (1) Judicial notice shall be taken of the Patent Co-operation Treaty and any gazette, bulletin or journal published under the Treaty; and any such document shall be admissible as evidence of any instrument or other act thereby communicated of any institution having functions under the Treaty.

(2) Evidence of any instrument issued under the Patent Co-operation Treaty by any institution or of any document in the custody

of any institution or reproducing in legible form any information in such custody otherwise than in legible form, or any entry or extract from such a document, may be given in any legal proceedings by production of a copy certified as a true copy by an official of that institution; and any document purporting to be such a copy shall be received in evidence without proof of the official position or handwriting of the person signing the certificate.

(3) Evidence of any instrument mentioned in subsection (2) may also be given in any legal proceedings —

(a) by production of a copy purporting to be printed by the Government Printer;

(b) where the instrument is in the custody of a Government department, by production of a copy certified on behalf of the department to be a true copy by an officer of the department generally or specially authorised to do so,

and any document purporting to be such a copy as is mentioned in paragraph (b) of an instrument in the custody of a Government department shall be received in evidence without proof of the official position or handwriting of the person signing the certificate, or of his authority to do so, or of the document being in the custody of the department.

(4) In this section, "legal proceedings" includes proceedings before the Registrar.

89. (1) Any country that is a party to the Paris Convention or any member of the World Trade Organization shall be deemed to be a convention country for the purposes of this Order.

Convention
countries.

(2) For the purposes of this section, every colony, protectorate and territory subject to the authority or under the suzerainty of another country, and every territory administered by another country under the trusteeship system of the United Nations shall be taken to be a convention country for the purposes of this Order if that another country is a party to the Paris Convention or a member of the World Trade Organization.

PART XVII

LEGAL PROCEEDINGS

90. (1) Any proceedings before the court relating to patents and other matters under this Order shall be dealt with by a judge sitting alone or, if he thinks fit, with one or more scientific adviser selected by the judge from the panel appointed under subsection (2).

Proceedings
before court.

(2) Rules of court may make provision for the appointment of a panel of scientific advisers to assist the court in proceedings under this Order and for regulating the function of such advisers and for remunerating such advisers.

Appeals from Registrar.

91. (1) An appeal shall lie to the court from any decision of the Registrar under this Order or the regulations except any of the following decisions —

(a) a decision falling within section 25(7);

(b) a decision under section 27(2) to omit any matter from a specification;

(c) a decision to give directions under section 33(1);

(d) a decision under the regulations which is excepted by the regulations from the right of appeal conferred by this section.

(2) An appeal shall not lie to the Court of Appeal from decision of the court on appeal from a decision of the Registrar under this Order or the regulations —

(a) except where the decision of the Registrar was given under section 38 or 81; or

(b) except where the ground of appeal is that the decision of the court is wrong in law,

but an appeal shall only lie to the Court of Appeal under this section if leave to appeal is given by the court or the Court of Appeal.

General powers of court.

92. (1) The court may, for the purpose of determining any question in the exercise of its original or appellate jurisdiction under this Order, make any order or exercise any other power which the Registrar could have made or exercised for the purpose of determining that question.

(2) In all proceedings before the court under this Order, the costs of the Registrar shall be in the discretion of the court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

Exercise of Registrar's discretionary powers.

93. Without prejudice to any rule of law, the Registrar shall give any party to a proceeding before him an opportunity of being heard before exercising adversely to that party any discretion vested in the Registrar by this Order or the regulations.

94. (1) Where under this Order —

Right of
audience in
patent
proceedings.

(a) any act has to be done by or to any person in connection with an application for a patent, or a patent, or any procedure thereto; or

(b) any party to any proceedings may appear before the Registrar, whether under this Order or any treaty to which Brunei Darussalam is a party,

the act may be done by or to the person or the party may be represented, by an advocate and solicitor or a registered patent agent or, subject to any regulations made under this Order, an agent whom he desires to represent him and act on his behalf.

(2) Without prejudice to the right of counsel to appear before the court, an advocate and solicitor who is not in actual practice, a registered patent agent and an agent referred to in subsection (1) shall each, notwithstanding anything in the Legal Profession Act, have the right to appear and be heard on behalf of any party to an appeal under this Order from the Registrar to the court.

Cap. 132.

95. (1) It is hereby declared that the rule of law which confers privilege from disclosure in legal proceedings in respect of communications made with an advocate and solicitor or a person acting on his behalf, or in relation to information obtained or supplied for submission to an advocate and solicitor or a person acting on his behalf, for the purpose of any pending or contemplated proceedings before a court in Brunei Darussalam extends to such communications so made for the purpose of any pending or contemplated proceedings before the Registrar under this Order.

Extension of
privilege for
communications
with solicitors
relating to
patent
proceedings.

(2) In this section, "legal proceedings" includes proceedings before the Registrar; and references to "legal proceedings" and "pending or contemplated proceedings" include references to applications for a patent and to international applications for a patent.

96. (1) A communication with respect to any matter relating to patents —

Privilege for
communications
with registered
patent agents.

(a) between a person and a registered patent agent, a partnership entitled under Part XIX to describe itself as a firm of patent agents or a body corporate entitled under Part XIX to describe itself as a patent agent; or

(b) for the purpose of obtaining, or in response to a request for, information which a person is seeking for the purpose of instructing his patent agent,

is privileged from disclosure in legal proceedings in Brunei Darussalam in the same way as a communication between a person and his solicitor or, as the case may be, a communication for the purpose of obtaining, or in response to a request for, information which a person seeks for the purpose of instructing his solicitor.

(2) For the purposes of this section "legal proceedings" includes proceedings before the Registrar.

Costs and
expenses in
proceedings
before
Registrar.

97. (1) The Registrar may, in proceedings before him under this Order, by order award to any party such costs as he may consider reasonable and direct how and by what parties they are to be paid.

(2) Any order awarding costs under this section may be enforced in the same way as if the order were an order of the court.

(3) If any person by whom—

(a) a reference is made to the Registrar under section 47; or

(b) notice of opposition is given to the Registrar under sections 38(4), 40(2), 54(6) or 107(2),

neither resides nor carries on business in Brunei Darussalam, the Registrar may require him to give security for the costs or expenses of the proceedings and in default of such security being given may treat the reference, application or notice as abandoned.

Licences
granted by
order of
Registrar or
the court.

98. Any order by the Registrar or the court for the grant of a licence under this Order shall, without prejudice to any other method of enforcement, have effect as if it were a deed, executed by the proprietor of the patent and all other necessary parties, granting a licence in accordance with the order.

PART XVIII

OFFENCES

Falsification of
Register, etc.

99. If a person makes or causes to be made a false entry in any Register kept under this Order, or a writing falsely purporting to be a copy or reproduction of an entry in any such Register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year or to both.

100. (1) If a person falsely represents that anything disposed of by him for value is a patented product, he shall, subject to this section, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or to both.

Unauthorised
claim of patent
rights.

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

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

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

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

Unauthorised
claim that
patent has been
applied for.

(a) no such application has been made; or

(b) any such application has been refused, withdrawn or treated as having been abandoned,

he shall, subject to this section, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or to both.

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

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

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

Misuse of title
"Registry of
Patents".

102. If any person uses on his place of business, or on any document issued by him, or otherwise, the words "Registry of Patents" or any other words suggesting that his place of business is, or is officially connected with, the Registry of Patents, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year or to both.

Offences by
corporations
and
partnerships.

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

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

(3) Proceedings for an offence under this Order alleged to have been committed by a partnership shall be brought in the name of the partnership and not in that of the partners; but without prejudice to any liability of the partners under subsection (5).

(4) A fine imposed on a partnership on its conviction in such proceedings shall be paid out of the partnership assets.

(5) Where a partnership is guilty of an offence under this Order, every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, is also guilty of the offence and liable to be proceeded against and punished accordingly.

PART XIX

PATENT AGENTS

Registration of
patent agents.

104. (1) The Attorney General may make regulations requiring the keeping of a Register of persons who act as agent for others for the purposes of applying for or obtaining patents.

(2) The regulations may contain such provision as the Attorney General thinks fit regulating the registration of persons and may, in

particular, require the payment of such fees as may be prescribed and authorise in prescribed cases the erasure from the Register of the name of any person registered in it, or the suspension of the registration of any person.

(3) The regulations may delegate the keeping of the register to another person, and may confer on that person such functions, including disciplinary functions, as may be prescribed.

(4) Such regulations may provide that a contravention of the regulations shall be an offence and may provide penalties not exceeding a fine of \$5,000 or imprisonment for a term not exceeding one year or both.

105. (1) An individual who is not a registered patent agent shall not —

Persons entitled
to describe
themselves as
patent agents.

(a) carry on a business (otherwise than in partnership) under any name or other description which contains the words "patent agent" or "patent attorney"; or

(b) in the course of a business otherwise describe himself or permit himself to be described as a "patent agent" or "patent attorney".

(2) A partnership shall not —

(a) carry on a business under any name or other description which contains the words "patent agent" or "patent attorney"; or

(b) in the course of a business otherwise describe itself or permit itself to be described as a firm of "patent agents" or "patent attorneys",

unless all the partners are registered patent agents or the partnership satisfies such conditions as may be prescribed for the purposes of this section.

(3) A body corporate shall not —

(a) carry on a business (otherwise than in partnership) under any name or other description which contains the words "patent agent" or "patent attorney"; or

(b) in the course of a business otherwise describe itself or permit itself to be described as a "patent agent" or "patent attorney",

unless all the directors of the body corporate are registered patent agents or the body corporate satisfies such conditions as may be prescribed for the purposes of this section.

(4) A person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year or to both.

(5) This section shall not be construed as prohibiting an advocate and solicitor from taking part in proceedings relating to patents and applications for patents and, in particular, shall not derogate from section 94 as it applies to advocates and solicitors.

Cap. 132. (6) A registered patent agent shall not be guilty of an offence under sections 18 and 19 of the Legal Profession Act by reason only of the preparation by him for use in proceedings on appeal under this Order to the court from the Registrar of any document other than a deed.

Cap. 132. (7) No offence is committed under sections 18 and 19 of the Legal Profession Act by any person by reason only of the preparation by him of a document [other than a deed] for use in proceedings before the Registrar in relation to any patent or application for a patent.

(8) Where this section would be contravened by the use of the words "patent agent" or "patent attorney" in reference to an individual, partnership or body corporate, it is equally contravened by the use of other expressions in reference to that person, or his business or place of business, which are likely to be understood as indicating that he is entitled to be described as a "patent agent" or "patent attorney".

(9) In this section "director", in relation to a body corporate whose affairs are managed by its members, means any member of the body corporate.

PART XX

MISCELLANEOUS AND GENERAL

Immunity of
Government, its
officers and
Examiners.

106. (1) The Government, any officer of the Registry and any Examiner shall not —

(a) be taken to warrant the validity of any patent granted under this Order or any treaty to which Brunei Darussalam is a party;

(b) incur any liability by reason of or in connection with any search, examination or investigation required or authorised by this Order or any such treaty, or any report or other proceedings consequent on any such search, examination or investigation; or

(c) incur any liability by reason of an incorrect entry in the register of patent agents maintained under Part XIX.

107. (1) The Registrar may, subject to any provision of the regulations, correct any error of translation or transcription, clerical error or mistake in any specification of a patent or application for a patent or any document filed in connection with a patent or such an application.

Correction of errors in patents and applications.

(2) Where the Registrar is requested to correct such an error or mistake, any person may in accordance with regulations give the Registrar notice of opposition to the request and the Registrar shall determine the matter.

108. (1) After publication of an application for a patent in accordance with section 27, the Registrar shall on request being made to him in the prescribed manner and on payment of the prescribed fee (if any) give the person making the request such information, and permit him to inspect such documents, relating to the application or to any patent granted in pursuance of the application as may be specified in the request, subject, however, to any prescribed restrictions.

Information about patent applications and patents, and inspection of documents.

(2) Subject to this section, until an application for a patent is so published, documents or information constituting or relating to the application shall not, without the consent of the applicant, be published or communicated to any person by the Registrar.

(3) Subsection (2) shall not prevent the Registrar from publishing or communicating to others any bibliographic information about an unpublished application for a patent.

(4) Where a person is notified that an application for a patent has been made, but not published in accordance with section 27, and that the applicant will, if the patent is granted, bring proceedings against that person in the event of his doing an order specified in the notification after the application is so published, that person may make a request under subsection (1), notwithstanding that the application has not been published, and that subsection shall apply accordingly.

(5) Where an application for a patent is filed, but not published, and a new application is filed in respect of any part of the subject matter of the earlier application (either in accordance with the regulations or in pursuance of an order under section 47) and is published, any person may make a request under subsection (1) relating to the earlier application and on payment of the prescribed fee the Registrar shall give him such information and permit him to inspect such documents as could have been given or inspected if the earlier application had been published.

(6) The publication of the whole or part of a specification of a patent or an application for a patent shall not constitute an infringement of any copyright which may subsist in Brunei Darussalam in any literary or artistic work.

Service by post. 109. Any notice required or authorised to be given by this Order or the regulations, and any application or other document so authorised or required to be made or filed, may be given, made or filed by post.

Extension of time. 110. (1) The Attorney General may make regulations to provide for extension of time for any period of time specified for the doing of an act in relation to an application for patent or in proceedings under the Order or the regulations, not being proceedings in court.

(2) The regulations may contain such provision as the Attorney General thinks fit regulating the circumstances in which such an extension may be granted and may also provide for the protection and compensation of person affected by the grant of extension of time and may authorise the Registrar to grant an extension of time notwithstanding that the period has already expired.

Hours of business of Registry and excluded days. 111. (1) Regulations may specify the hour at which the Registry shall be take to be closed on any day for purposes of the transaction by the public of business under this Order or of any class of such business, and may specify days as excluded days for any such purposes.

(2) Any business done under this Order on any day after the hour so specified in relation to business of that class, or on a day which is an excluded day in relation to business of that class, shall be taken to have been done on the next following day not being an excluded day; and where the time for doing anything under this Order expires on an excluded day, that time shall be extended to the next following day not being an excluded day.

Government's right to sell forfeited articles. 112. Nothing in this Order affects the right of the Government or any person deriving title directly or indirectly from the Government to dispose of or use articles forfeited under the laws relating to customs or excise.

Extent of invention. 113. (1) For the purposes of this Order, an invention for a patent for which an application has been made or for which a patent has been granted shall, unless the context otherwise requires, be taken to be that specified in a claim of the specification of the application or patent, as the case may be, as interpreted by the description and any drawings contained in that specification, and the extent of the protection conferred by a patent or application for a patent shall be determined accordingly.

(2) It is hereby declared for the avoidance of doubt that where more than one invention is specified in any such claim, each invention may have a different priority date under section 17.

114. (1) Provision may be made by regulations prescribing the circumstances in which the specification of an application for a patent, or of a patent, for an invention which requires for its performance the use of a micro-organism is to be treated as disclosing the invention in a manner which is clear enough and complete enough for the invention to be performed by a person skilled in the art.

Requirement relating to samples of micro-organisms.

(2) The regulations may in particular require the applicant or proprietor of the patent —

(a) to take such steps as may be prescribed for the purposes of making available to the public samples of the micro-organism; and

(b) not to impose or maintain restrictions on the uses to which such samples may be put, except as may be prescribed.

(3) The regulations may provide that, in such cases as may be prescribed, samples need only be made available to such persons or descriptions of persons as may be prescribed; and the regulations may identify a description of persons by reference to whether the Registrar has given his certificate as to any matter.

(4) Civil proceedings may be brought in the court for revocation of the patent under section 80(1)(c) if any of the requirements of the regulations ceases to be complied with.

115. (1) The Attorney General with the approval of His Majesty may make such regulations not inconsistent with the provisions of this Order as he thinks expedient for regulating the business of the Registry in relation to patents and applications for patents (including international applications for patents) and for regulating all matters placed by this Order under the direction or control of the Registrar.

Regulations.

(2) Without prejudice to the generality of subsection (1), the regulations may make provision for all or any of the following purposes —

(a) prescribing the form and contents of applications for patents and other documents which may be filed at the Registry and requiring copies to be furnished of any such documents;

(b) regulating the procedure to be followed in connection with any proceeding or other matter before the Registrar or the Registry and authorising the rectification of irregularities of the procedure;

(c) requiring fees to be paid in connection with any such proceeding or matter or in connection with the provision of any

service by the Registry and providing for the remission of fees in the prescribed circumstances;

(d) regulating the mode of giving evidence in any such proceeding and empowering the Registrar to compel the attendance of witnesses and the discovery of and production of documents;

(e) regulating the procedure to be followed in any proceeding or other matter relating to the amendment of a patent and requiring the Registrar to publish any proposed amendment of a patent and any other prescribed matters including any prescribed steps in any such proceeding;

(f) prescribing time limits for doing anything required to be done in connection with any such proceeding by this Order or the regulations;

(g) giving effect to the right of an inventor of an invention to be mentioned in an application for a patent for the invention;

(h) providing for the publication and sale of documents in the Registry and of information about such documents;

(i) prescribing, in relation to international applications, matters necessary or convenient to be prescribed for carrying out or giving effect to the Patent Co-operation Treaty;

(j) excluding or varying the operation of the provisions of this Order in relation to international applications;

(k) requiring and regulating the translation of documents in connection with any application for a patent and the filing and authentication of any such translations; and

(l) prescribing the scale of costs for proceedings before the Registrar.

(3) Regulations may make different provisions for different cases.

(4) Regulations shall provide for the publication by the Registrar in the *Gazette* of particulars of applications for and grants of patents and of other proceedings under this Order.

(5) Regulations may require or authorise the Registrar to make arrangements for the publication of reports of cases relating to patents decided by him or by any court or body whether in Brunei Darussalam or elsewhere.

116. Subject to section 117, the Inventions Act and any Regulations made thereunder are repealed. Repeals.
Cap. 72.

117. (1) Where an application has been made under section 2 of the Inventions Act before the appointed day of section 116, the Registrar may issue a certificate of registration under section 4 of that Act after that day as if that Act and any Regulations made thereunder had not been repealed. Transitional provisions.

(2) Where a patent has been granted under any law having effect in the United Kingdom, Malaysia or Singapore during the period of 36 months immediately before the appointed day of section 116 and that patent is still in force on that day, the proprietor of that patent may, within a period of 24 months from that appointed day, make an application for a certificate of registration and the Registrar may issue a certificate on such application as if the Inventions Act and any Regulations made thereunder had not been repealed. Cap. 72.

(3) Where an application for a patent has been made before the appointed day of section 116 under any law relating to patents having effect in the United Kingdom, Malaysia or Singapore and the application is pending on that appointed day, the applicant may, within a period of 12 months from the date of issue of the grant of a patent on that application, make an application for a certificate of registration and the Registrar may issue a certificate on such application as if the Inventions Act and any Regulations made thereunder had not been repealed. Cap. 72.

(4) Any certificate of registration issued under section 4 of the Inventions Act and is in force immediately before the appointed day of section 116 or issued after that day by virtue of subsections (1), (2) or (3) shall continue in force and the patent to which the certificate relates shall be treated for the purposes of this Order as if it were a patent under this Order granted in pursuance of an application made under this Order and the proprietor of the patent shall accordingly have the same rights, remedies, privileges and obligations and subject to the same conditions (including the payment of any fee prescribed under sections 36), as the proprietor of a patent under this Order subject to the following modifications —

(a) the term of the patent shall date from the date of the patent in the United Kingdom, Malaysia or Singapore, as the case may be, and the patent shall, subject to this Order, remain in force for 20 years from that date and only so long as that patent has not been revoked;

(b) such other modifications as may be prescribed.

(5) A patent to which subsection (4) applies shall be treated for the purposes of sections 14(3) and 17(2) as being granted on an application with a date of filing under this Order and published under this Order.

(6) The date of filing an application for a patent as mentioned in subsection (5), and the priority date of an invention or other matter contained in that application, shall be determined in accordance with the provisions of the applicable law relating to patents.

Cap. 72. (7) Where an act is commenced before the appointed day of this Order and continues to be done on or after that day, then, if it would not, under the Inventions Act (repealed by this Order), amount to an infringement of a patent or the privileges or rights arising under a specification, its continuance on or after that day shall not amount to the infringement of that patent or those privileges or rights.

Cap. 72. (8) On the appointed day of section 116, the Register of Patents kept under section 9 of the repealed Inventions Act shall be taken to form part of the Register of Patents kept under this Order.

Made this 15th. day of Rabiulawal, 1420 Hijriah corresponding to the 29th. day of June, 1999 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM