

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.

House of Representatives,

4th June, 1943.

Hon. Mr. Mason

PATENTS, DESIGNS, AND TRADE-MARKS
AMENDMENT

ANALYSIS

Title.	
1. Short Title.	5. Extension of time for applications under convention arrangements.
2. Section 20 of principal Act (as to extension of patents) amended.	6. Provisions as to communication of inventions and designs under agreements with other countries.
3. Extension of patents where loss by reason of hostilities.	7. Provisions as to regulations under sections 5 and 6.
4. Amendments as to right of Crown to use inventions.	

A BILL INTITULED

AN ACT to amend the Patents, Designs, and Trade-marks Act, 1921-22. Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Patents, Designs, and Trade-marks Amendment Act, 1943, and shall be read together with and deemed part of the Patents, Designs, and Trade-marks Act, 1921-22 (hereinafter referred to as the principal Act). Short Title.
See Reprint of Statutes. Vol. VI, p. 656

2. Section twenty of the principal Act is hereby amended by repealing the proviso to subsection one and substituting the following proviso:—
15 “ Provided that the Court may allow such a petition to be presented at such time, not being later than the time limited for the expiration of the patent, as the Court may in its discretion think fit.” Section 20 of principal Act (as to extension of patents) amended.
Cf. 22 & 23 Geo. V, c. 32, s. 13 (Imp.)

2 *Patents, Designs, and Trade-marks Amendment*

Extension of
patents where
loss by reason
of hostilities.
Cf. 5 & 6 Geo.
VI, c. 6, s. 1
(Imp.)

3. (1) Where an application is made under subsection six of section twenty of the principal Act,—

(a) The power conferred on the Court by the proviso to subsection one of that section (as enacted by the *last preceding* section) to allow the application to be made at such time as the Court may in its discretion think fit shall be exercisable free from the restriction imposed by that proviso that the time allowed must be not later than the time limited for the expiration of the patent, if the Court is satisfied that the allowance of a time later than the expiration thereof is justified by the patentee's having been prevented from making the application by being on active service or by other circumstances arising by reason of hostilities between His Majesty and any foreign State: 5

(b) An order may be made notwithstanding that the term of the patent may have been previously extended, or that a new patent for the invention may have been previously granted, by one or more orders made under the said section twenty, and notwithstanding that the previous order, or one of the previous orders, may have been made otherwise than pursuant to an application under subsection six of that section: 10

(c) The restriction imposed by subsection five of that section on the length of the further term for which a patent may be extended shall not have effect, but the term granted by an order, whether by way of extension or grant of a new patent, shall not exceed ten years, and, where two or more orders are made pursuant to applications under subsection six of that section in relation to the same invention, the aggregate of the terms thereby granted, whether by way of extension or grant of a new patent, shall not exceed ten years. 25

(2) In the case of a patent limited to expire after the third day of September, nineteen hundred and thirty-nine, and before the expiration of six months from the 30

passing of this Act, an application under subsection six of the said section twenty may be made at any time during the said six months, and the Court may allow the application to be made at such later time as the
5 Court may in its discretion think fit if the Court is satisfied that the allowance of a time later than the expiration of the said six months is justified by the applicant's having been prevented from making the application by being on active service or by other
10 circumstances arising by reason of hostilities between His Majesty and any foreign State.

4. (1) The power of a Government Department under subsection one of section thirty-two of the principal Act to make, use, or exercise an invention for the
15 services of the Crown shall include power during any war period to make, use, exercise, or vend an invention, upon such terms as are mentioned in the said subsection one, for any purpose which appears to the Department necessary or expedient for the efficient
20 prosecution of any war in which His Majesty may be engaged or for the maintenance of supplies and services essential to the life of the community; and the terms of any such agreement or license as is mentioned in the said subsection one shall be inoperative so far as
25 concerns the making, use, exercise, or vending of an invention under this subsection as they are inoperative so far as concerns the making, use, or exercise of an invention under that subsection.

(2) Nothing in subsection three of the said section
30 thirty-two shall affect the right to vend an invention conferred by the *last preceding* subsection.

(3) Subsection two of the said section thirty-two is hereby amended by omitting the words "or exercise", and substituting the words "exercise, or
35 vending".

(4) A purchaser of any articles sold in pursuance of subsection *one* of this section or subsection three of section thirty-two of the principal Act, and any person claiming through him, shall have, and be deemed always
40 to have had, power to deal with the articles in like manner as if the patent for the invention were held on behalf of His Majesty.

Amendments
as to right of
Crown to use
inventions.

Cf. 5 & 6
Geo. VI, c. 6,
s. 2 (Imp.)

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(5) For the purposes of the proviso to section sixty-six of the principal Act, this section shall be deemed to form part of section thirty-two of the principal Act.

(6) For the purposes of subsection *one* of this section the expression "war period" means any period during which His Majesty may be at war. 5

(7) This section shall be deemed to have come into force on the third day of September, nineteen hundred and thirty-nine. 10

Extension
of time for
applications
under
convention
arrangements.
Cf. 7 Edw. VII,
c. 29, s. 91B;
5 & 6 Geo. VI,
c. 6, s. 3 (Imp.)
1939, No. 26

5. (1) The Governor-General may, as respects any convention country, if he is satisfied that provision substantially equivalent to the provision to be made by or under this section has been or will be made under the law of that country, make regulations under the principal Act empowering the Commissioner to extend the time for making application under section fifty-five of the Patents, Designs, and Trade-marks Amendment Act, 1939, for the granting, in priority to other applicants, of a patent for an invention, or for the registration, in priority to other applicants, of a design, in any case where the person who applied for protection in the convention country or his legal representative or assignee has been prevented by the law, or by the action of the Government, of the convention country from making application under the said section fifty-five within the time allowed by that section. 15 20 25

(2) Regulations made by virtue of this section—

(a) May, where any agreement or arrangement has been made between His Majesty's Government in New Zealand and the Government of the convention country for the supply or mutual exchange of information or articles, provide, either generally or in any class of case specified in the regulations, that an extension of time shall not be granted under this section unless the invention or design has been communicated in accordance with the agreement or arrangement: 30 35

(b) May, either generally or in any class of case specified in the regulations, fix the maximum extension which may be granted under this section and provide for reducing the term of 40

- any patent granted on an application made by virtue of this section, and (notwithstanding anything in section one hundred and seventeen of the principal Act or any Order in Council thereunder) vary the times for the payment of renewal fees in respect of such a patent and the amount of such fees:
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- (c) May prescribe or allow any special procedure in connection with applications made by virtue of this section:
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- (d) May empower the Commissioner, as respects any application made by virtue of this section, to substitute for the period of eighteen months specified in the proviso to subsection seven of the said section fifty-five (which provides that if on an application under that section for a patent a complete specification is not accepted within eighteen months from the application, or earliest application, for protection in the convention country, the specification shall be open to public inspection at the end of that period) such other period as appears to him expedient:
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- (e) May empower the Commissioner to extend, subject to such conditions, if any, as may be imposed by or under the regulations, the time limited by or under the principal Act for doing any act in relation to an application made by virtue of this section:
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- (f) May provide for securing that the rights conferred by a patent granted or registration made on an application made by virtue of this section shall be subject to such restrictions or conditions as may be specified by or under the regulations and in particular that where, otherwise than as the result of any communication made in accordance with such an agreement or arrangement as is mentioned in paragraph (a) of this subsection, and before the date of the application in question or such later date as may be allowed by the regulations, either the invention has been made, used, exercised, or vended, or the
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6. *Patents, Designs, and Trade-marks Amendment*

design applied, by any person (including a person acting on behalf of His Majesty), or application for a patent for the invention or for registration of the design has been made by any such person as aforesaid, the rights conferred by a patent granted, or registration made, upon the first-mentioned application shall be subject to such conditions and reservations for the protection of that person as may be specified by or under the regulations. 5 10

Provisions as to communication of inventions and designs under agreements with other countries.
Cf. 7 Edw. VII, c. 29, s. 91c; 5 & 6 Geo. VI, c. 6, s. 3 (Imp.)

6. Where an agreement or arrangement has been made between His Majesty's Government in New Zealand and the Government of another country for the supply or mutual exchange of information or articles, and the Governor-General is satisfied that provision substantially equivalent to the provision to be made by or under this section has been or will be made under the law of that country, the Governor-General may make regulations under the principal Act to secure that the communication, in accordance with the agreement or arrangement, of an invention or design, or the publication, making, use, exercise, or vending of an invention, or publication or application of a design, in consequence of such communication, shall not prejudice any application for a patent for the invention or registration of the design, being an application made by a person from whom the invention or design was so communicated or the legal representative or assignee of such a person, or invalidate the grant on such an application of a patent for the invention or the registration on such an application of the design. 15 20 25 30

Provisions as to regulations under sections 5 and 6.
Cf. 7 Edw. VII, c. 29, s. 91d; 5 & 6 Geo. VI, c. 6, s. 3 (Imp.)

7. Regulations made by virtue of either of the *last two preceding* sections, and any order made, direction given, or other action taken under the regulations by the Commissioner, may be made, given, or taken so as to have effect as respects things done or omitted to be done on or after such date, whether before or after the making of the regulations or before or after the commencement of this Act, as may be specified in the regulations. 35 40