

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,

9th October, 1946

Hon. Mr. Jones

PATENTS, DESIGNS, AND TRADE-MARKS
AMENDMENT

ANALYSIS

Title.	3. Amending provision as to extension of time for applications under convention arrangements.
1. Short Title.	4. Protection of inventions and designs communicated under agreements or arrangements with other countries. Repeal.
2. Application to Commissioner for extension of term of patents where loss arises by reason of hostilities.	5. Public inspection of specifications.
	6. Publication of journal, indexes. &c.
	7. Correction of errors. Schedule.

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, 1946, 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

Application to
Commissioner
for extension of
term of patents
where loss
arises by reason
of hostilities.

*Cf. 9 & 10
Geo. VI, c. 44,
s. 1 (Imp.)
1943, No. 6*

2. (1) In any case where an application could be made to the Court under subsection six of section twenty of the principal Act, the application may, at the option of the patentee, be made in the prescribed manner to the Commissioner instead of to the Court, and the provisions of that section and of section three of the Patents, Designs, and Trade-marks Amendment Act, 1943, shall apply, so far as applicable and with the necessary modifications, to such an application in like manner as they apply to an application to the Court under the said subsection six, except that the requirement imposed on an applicant by subsection one of that section to advertise his intention to make the application shall be dispensed with.

(2) If the Commissioner considers that the application raises issues of a kind that would be more fittingly decided by the Court, he may, if he thinks fit, refer the application for decision by the Court.

(3) An appeal shall lie to the Court from any decision of the Commissioner on an application under this section, and on such an appeal the applicant and any other parties to the proceedings shall be entitled to appear and be heard, and the Commissioner shall also be entitled to appear and be heard and shall appear if so directed by the Court.

Amending
provision as to
extension of
time for
applications
under
convention
arrangements.

*Cf. 9 & 10
Geo. VI, c. 44,
s. 6 (3) (Imp.)
1943, No. 6*

Protection of
inventions and
designs
communicated
under
agreements or
arrangements
with other
countries.

*Cf. 9 & 10
Geo. VI, c. 44,
s. 2 (Imp.)*

3. Section five of the Patents, Designs, and Trade-marks Amendment Act, 1943, is hereby amended by omitting from subsection one the words from "in any case where" to the end of the subsection, and substituting the words "in any case where the period specified in proviso (a) to subsection one of the said section fifty-five for the making of an application under that section expires during a period prescribed by the regulations."

4. (1) Subject to the provisions of this section, the Governor-General may make regulations under the principal Act to secure that, where an invention or design has been communicated in accordance with an agreement or arrangement made between His Majesty's

Government in New Zealand and the government of any other country for the supply or mutual exchange of information or articles,—

- 5 (a) Such communication, or the publication, making, use, exercise, or vending of the invention, or the publication or application of the design, in consequence of such communication, shall not prejudice any application for a patent for the invention or any application for the registra-
10 tion 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
15 of a patent for the invention or the registration on such an application of the design:
- 20 (b) Any such application shall have priority over any other application for a patent for the invention or any part thereof or for registration of the design or any part thereof, if that other application was made by a person who obtained the invention or design or part thereof in consequence of such communication as aforesaid:
- 25 (c) Any application for a patent for an invention or for the registration of a design may be refused on the ground that the invention or design or any part thereof was obtained in consequence of such communication as aforesaid, and any patent or registration of a
30 design may be revoked or cancelled on that ground.

(2) Regulations made pursuant to the *last preceding*
35 subsection may provide that the publication, making, use, exercise, vending, or obtaining of an invention, or the publication, application, or obtaining of a design, shall, in such circumstances and subject to such conditions or exceptions as may be prescribed by the regulations, be presumed to have been in consequence
40 of such communication as aforesaid.

(3) The powers of the Governor-General under this section, so far as they are exercisable for the benefit of persons from whom inventions or designs have been communicated to His Majesty's Government in New

Zealand by the government of any other country, shall only be exercised if and to the extent that the Governor-General is satisfied that substantially equivalent provision has been or will be made under the law of that country for the benefit of persons from whom inventions or designs have been communicated by His Majesty's Government in New Zealand to the government of that country. 5

(4) For the purposes of the *last preceding* subsection references to His Majesty's Government in New Zealand or to the government of any other country shall be construed as including references to any person authorized by that government to make or receive any such communication. 10

1943, No. 6 (5) The provisions of section seven of the Patents, Designs, and Trade-marks Amendment Act, 1943, shall extend and apply with respect to regulations made pursuant to this section and with respect to any action taken under the regulations. 15

Repeal. (6) This section is in substitution for section six of the Patents, Designs, and Trade-marks Amendment Act, 1943, and that section is accordingly hereby repealed. 20

Public inspection of specifications. 5. (1) Three months after a complete specification has been left, the Commissioner shall, if the specification has not previously been accepted, publish in the *Patent Office Journal* a notification that the complete specification is open to public inspection and thereupon the application, complete specification, and provisional specification (if any) shall be open to public inspection. The provisions of this subsection shall extend to apply in respect of complete specifications left before the date of the passing of this Act, not being complete specifications which before that date have become open to public inspection or which the Commissioner has before that date refused to accept, or in respect of which the applications have become void or lapsed before that date. 25 30 35

(2) Notwithstanding the provisions of the *last preceding* subsection, the Commissioner may withhold publication in the *Patent Office Journal* of the notification required thereunder for such time as the Commissioner in his discretion thinks fit. Any decision 40

of the Commissioner under this subsection shall be subject to appeal to the Court, and the Commissioner shall withhold publication pursuant to the *last preceding* subsection until after the time for giving notice of appeal
5 has expired, and, if notice of appeal is given, until after the appeal has been determined by the Court:

Provided that notice of appeal shall be filed in the Court and served upon the Commissioner within seven days after the giving of notice of the decision appealed
10 against either to the applicant or to his agent:

Provided also that nothing in this subsection shall be deemed to derogate from the provisions of section eleven of the principal Act.

(3) When a specification has become open to public
15 inspection in pursuance of section eleven of the principal Act or in pursuance of the foregoing provisions of this section it shall be deemed to have been published.

(4) This section shall be read subject to the provisions of section thirty-three of the principal Act.

(5) The enactments mentioned in the Schedule to
20 this Act are hereby consequentially amended in the manner indicated in that Schedule.

6. (1) The Commissioner shall issue periodically a journal of patented inventions, registered designs, and
25 registered trade-marks to be called the *Patent Office Journal*, and shall publish therein all such matters as are directed by the principal Act or otherwise by law to be published therein and such other matters and information as may appear to him to be useful or
30 important to proprietors of patents, designs, or trade-marks registered or subsisting in New Zealand. Provision shall be made by the Commissioner for keeping on sale copies of such journal.

(2) The Commissioner may prepare and publish in
35 such form as he deems expedient indexes, specifications, abridgments of specifications, catalogues, and other works relating to inventions, patents, designs, and trade-marks as he thinks fit.

(3) Where by the principal Act or otherwise by
40 law the Commissioner is directed, authorized, or empowered to do, exercise, or perform any act, power, function, or duty, any *Patent Office Journal* purporting

Publication of
journal,
indexes, &c.
Cf. 7 Edw. VII,
c. 29, s. 46
(Imp.)

Cf. 1908,
No. 56, s. 46
See Reprint
of Statutes,
Vol. III, p. 120

to contain a notice of the doing, exercise, or performance of any such act, power, function, or duty, shall be *prima facie* evidence that the same was lawfully done, exercised, or performed.

Correction of errors.

7. Where a mistake exists in any Register, certificate of registration, or patent solely by reason of an error in the Patent Office, the Commissioner may, after giving one month's notice in the *Patent Office Journal* of his intention so to do and after hearing any person likely to be aggrieved thereby, correct any mistake in the Register, certificate of registration, or patent, and may require the production thereof for the purpose of making the correction thereto. Any decision of the Commissioner under this section shall be subject to appeal to the Court.

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SCHEDULE

Schedule.

AMENDMENTS CONCERNING PUBLICATION OF SPECIFICATIONS

Title of Enactment.	Number of Section affected.	Nature and Extent of Amendment.
1921-22, No. 18— The Patents, Designs, and Trade-marks Act, 1921-22 (Reprint of Statutes, Vol. VI, p. 662)	Section 12	By omitting the word "acceptance" wherever that word occurs, and substituting in both places the word "publication".
	Section 15	By omitting the word "acceptance" from the proviso, and substituting the word "publication".
	Section 120	By omitting from subsection (1) the words "or become void".
1939, No. 26— The Patents, Designs, and Trade-marks Amendment Act, 1939	Section 55	By omitting the word "accepted" from proviso (b) to subsection (1), and substituting the word "published". By omitting from the proviso to subsection (7) all the words after the word "specification".