

Hon. Mr. Mason

PATENTS, DESIGNS, AND TRADE-MARKS
AMENDMENT

ANALYSIS

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| <p>Title.</p> <p>1. Short Title.</p> <p>2. Governor-General may make regulations to give effect to London Accord and Neuchâtel Agreement and Protocols thereto.</p> <p>3. Attorney-General may appear in patent proceedings.</p> <p>4. Officers and employees of Patent Office not to acquire interest in any patent.</p> | <p>5. Commissioner may dispense with production of probate or letters of administration in certain cases.</p> <p>6. Inventions relating to atomic energy.</p> <p>7. Repeal of provision requiring Governor-General's consent to registration, assignment, or transmission of certification trade-mark.</p> |
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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, 1947, 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

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Governor-General may make regulations to give effect to London Accord and Neuchâtel Agreement and Protocols thereto.

2. The Governor-General may from time to time, by Order in Council, make all such regulations as appear to him to be necessary for giving full effect to any of the provisions of the following international agreements to which New Zealand is a party, and to every Protocol thereto which is agreed to or accepted by the Government of New Zealand at any time before or after the passing of this Act, namely:— 5

- (a) The London Accord, signed at London on the twenty-seventh day of July, nineteen hundred and forty-six, and relating to former German-owned patents in the possession and control of the Governments which are parties thereto: 10
- (b) The Neuchâtel Agreement, signed at Neuchâtel on the eighth day of February, nineteen hundred and forty-seven, and relating to the preservation or restoration of rights of industrial property affected by the second world war. 15

Attorney-General may appear in patent proceedings.

3. (1) In any proceedings before the Court or the Commissioner for the grant, extension, amendment, or revocation of a patent, or for the prevention of the abuse of monopoly rights, or where the validity of a patent is in question, the Attorney-General, if in his opinion the public interest is or may be involved, may appear and be heard and take any steps which he considers desirable as if he were a party to the proceedings. 25

(2) In any proceedings before the Court or the Commissioner, any party who intends to question the validity of a patent shall give notice of that intention to the Solicitor-General at least *twenty-one* days before the hearing, and shall supply the Solicitor-General with a copy of such papers filed in the proceedings by himself and by any other party as the Solicitor-General requires. 30 35

(3) In any proceedings in which the Attorney-General appears in accordance with this section, costs may be awarded either to or against the Attorney-General. 40

4. Every officer and employee of the Patent Office shall be incapable, during the period for which he holds his appointment, to acquire directly or indirectly, except under a will or on an intestacy, any right or interest in any patent granted on an application made after the passing of this Act.

Officers and employees of Patent Office not to acquire interest in any patent.

5. (1) For the purposes of this section, unless the context otherwise requires,—

Commissioner may dispense with production of probate or letters of administration in certain cases.

10 “Deceased proprietor” means a registered proprietor of any patent, design, or trade-mark who has died, whether before or after the passing of this Act; and includes any applicant for a patent, design, or trade-mark who has died before it is granted or registered, whether before or after the passing of this Act; and also includes an inventor of any invention who has died before or after the passing of this Act without making an application for a patent for the invention:

15 “Qualified person”, in relation to any deceased proprietor, means a person who satisfies the Commissioner,—

20 (a) That he has obtained or is entitled to obtain probate of the will of the deceased proprietor or letters of administration in his estate in the place where the deceased proprietor was domiciled at his death, or that he is the legal representative of the deceased proprietor in that place:

25 (b) That probate of the will of the deceased proprietor or letters of administration in his estate have not been granted or resealed in New Zealand:

30 (c) That the Commissioner of Stamp Duties is satisfied that no death duty will be payable in New Zealand in the estate of the deceased proprietor:

35 (d) That the interests of the creditors of the deceased proprietor, and of all persons beneficially interested under his will or on his intestacy, will be adequately safeguarded if the Commissioner registers the qualified person as the proprietor of the patent, design, or trade-mark.

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(2) Where the registered proprietor of any patent, design, or trade-mark has died before or after the passing of this Act, the Commissioner, in his discretion and without requiring the production of probate or letters of administration, may register any qualified person as the proprietor of the patent, design, or trade-mark. 5

(3) Where an applicant for any patent, design, or trade-mark has died before the grant of the patent or registration of the design or trade-mark, whether before or after the passing of this Act, the Commissioner, in his discretion and without requiring the production of probate or letters of administration, may allow any qualified person to complete the application, and may register that person as the proprietor of the patent, design, or trade-mark, or may accept the consent of that person for the purposes of section fifty-nine of the Patents, Designs, and Trade-marks Amendment Act, 1939, as if that person were the personal representative of the deceased applicant. 10 15 20

1939, No. 26

(4) The Commissioner, in his discretion and without requiring the production of probate or letters of administration in the estate of a deceased inventor, may allow an application under section forty-eight of the principal Act to be made by, and may grant a patent to, any qualified person as if he were the legal representative of the deceased inventor. 25

(5) Every qualified person who is registered under this section as the proprietor of a patent, design, or trade-mark shall hold it subject to all existing interests and equities affecting it. 30

(6) Nothing in sections forty-two and forty-five of the Administration Act, 1908, shall be deemed to restrict the operation of this section.

See Reprint of Statutes, Vol. III, pp. 142 and 144

Inventions relating to atomic energy. Cf. Atomic Energy Act, 1946 (9 & 10 Geo. VI, c. 80), s. 12 (U.K.).

6. (1) Where an application has been made to the Commissioner for the grant of a patent, and it appears to the Commissioner that the invention which is the subject-matter of the application relates to the production or use of energy derived from the atomic nucleus or research into matters connected therewith, he shall serve a notice in writing on the Minister of 35 40

Defence to that effect, and may, notwithstanding anything in the principal Act or any other Act, omit or delay the doing of anything which he would otherwise be required to do in relation to the application, and
5 give directions for prohibiting or restricting the publication of information with respect to the subject-matter of the application or the communication of that information to particular persons or classes of persons; and any person who contravenes any such direction
10 commits an offence against this section.

(2) Where the Minister of Defence is notified as aforesaid, he shall forthwith consider whether the invention which is the subject-matter of the application in question is of importance for purposes of defence,
15 and may inspect all documents and information furnished to the Commissioner in connection with the application, and if he is satisfied either then or subsequently that the invention is not of importance for purposes of defence he shall serve a notice in writing
20 on the Commissioner to that effect, and thereupon the Commissioner shall cease to exercise his powers under the *last preceding* subsection in relation to that application and shall forthwith revoke any directions given under those powers in relation thereto.

(3) Where any notice is given by or to the Commissioner under the foregoing provisions of this section in relation to any application, he shall serve a copy of the notice on the applicant.
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(4) Where, on an application to the Commissioner
30 for the grant of a patent, a notice has been served under subsection *one* of this section and six months have elapsed from the date of the service of that notice without the service of a notice under subsection *two* of this section in relation to that application, any
35 person who has, before the date of the application, incurred expense or done work in connection with the discovery or development of the invention concerned shall be entitled to be paid such compensation in respect of that expense or work as the Minister of
40 Defence may, with the approval of the Minister of Finance, determine, and the compensation shall not in any case be less than the amount of the expense reasonably so incurred, and the amount of that expense shall, in default of agreement between the Minister of
45 Defence and that person, be settled by arbitration:

Provided that, if a notice is subsequently served by the Minister of Defence under subsection *two* of this section in relation to the application, there shall be recoverable by the Minister of Defence as a debt due to the Crown such part of the compensation paid to any 5 person under this subsection in connection with the invention concerned as may be reasonable, having regard to the length of the period during which powers were exercised under subsection *one* of this section in relation to the application and all the other circum- 10 stances of the case; and the amount to be so recovered shall, in default of agreement between the Minister of Defence and the said person, be settled by arbitration.

(5) No person resident in New Zealand shall, except under the authority of a written permit granted by or 15 on behalf of the Commissioner, make or cause to be made any application outside New Zealand for the grant of a patent for an invention which relates to the production or use of energy derived from the atomic nucleus or research into matters connected therewith; 20 and if any person makes any such application except under the authority of such a permit, or contravenes or fails to comply with any condition subject to which such a permit was granted, he commits an offence against this section: 25

Provided that this subsection shall not apply in any case where—

- (a) An application for a patent for the same invention has been made in New Zealand not less than three months before the application 30 outside New Zealand; and
- (b) Either no direction has been given under subsection *one* of this section in relation to the application in New Zealand, or all such 35 directions have been revoked.

(6) Where the Commissioner in the exercise of powers under subsection *one* of this section omits or delays the doing of anything or gives directions for prohibiting or restricting the publication or communication of information, he may, subject to such conditions, if any, as he thinks fit to impose, extend the time limited by or under the principal Act for doing any act where he is satisfied that an extension ought to be granted by reason of the exercise of the powers aforesaid. 40 45

(7) The right of a person to apply for, or obtain, a patent in respect of an invention shall not be prejudiced by reason only of the fact that the invention has previously been communicated to the Minister of
5 Defence under this section, and a patent in respect of an invention shall not be held to be invalid by reason only that the invention has been communicated as aforesaid.

(8) The power of a Government Department under
10 subsection one of section thirty-two of the principal Act, as amended by section four of the Patents, Designs, and Trade-marks Amendment Act, 1943, shall include power to make, use, exercise, or vend an invention, upon such terms as are mentioned in the
15 said subsection one as so amended, for such purposes relating to the production or use of energy derived from the atomic nucleus or research into matters connected therewith as the Minister in charge of the administration of the Department (in this subsection
20 referred to as the said Minister) thinks necessary or expedient, and subsections two to four of the said section thirty-two, and the said section four, shall apply accordingly, subject to the modification that in subsection four of the said section four the reference to
25 the subsections therein mentioned shall include a reference to this subsection; and in connection with the making, use, exercise, or vending as aforesaid the said Minister may authorize the use of any drawing, model, plan, or other document or information in such manner
30 as he thinks necessary or expedient, notwithstanding anything to the contrary contained in any licence or agreement; and the terms of any licence or agreement concluded between the inventor or patentee of an invention and any person other than the said Minister
35 shall be inoperative so far as concerns the making, use, exercise, or vending of that invention under this subsection.

(9) Every person who commits an offence against this section shall be liable on summary conviction to
40 imprisonment for a term not exceeding *three* months or to a fine not exceeding *one hundred* pounds.

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Repeal of
provision
requiring
Governor-
General's
consent to
registration,
assignment, or
transmission
of certification
trade-mark.
1939, No. 26

7. Subsection eight of section thirty-nine of the Patents, Designs, and Trade-marks Amendment Act, 1939, is hereby repealed.