

Serial Number 1947/197



THE PATENTS, DESIGNS, AND TRADE-MARKS (NEUCHÂTEL AGREEMENT) REGULATIONS 1947

B. C. FREYBERG, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington, this 17th day of
December, 1947

Present :

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 2 of the Patents, Designs, and Trade-marks Amendment Act, 1947, His Excellency the Governor-General, acting by and with the consent of the Executive Council, doth hereby make the following regulations.

REGULATIONS

1. These regulations may be cited as the Patents, Designs, and Trade-marks (Neuchâtel Agreement) Regulations 1947.

2. In these regulations, unless the context otherwise requires,—
“ Agreement country ” means a country to which applies the Neuchâtel Agreement, signed at Neuchâtel on the 8th day of February, 1947, and relating to the preservation or restoration of rights of industrial property affected by the Second World War :

“ Convention application ” means an application for a patent or for the registration of a design or trade-mark made under the provisions of section 55 of the Patents, Designs, and Trade-marks Amendment Act, 1939 :

“ The Act ” means the Patents, Designs, and Trade-marks Act, 1921–22.

3. The Commissioner may extend the time for making a convention application for the grant of a patent, or for the registration of a design or trade-mark, until a date not later than the 31st day of December, 1947, in any case where the first foreign application was filed in an Agreement country not later than the 31st day of December, 1946, and the period specified in paragraph (a) of subsection (1) of section 55 of the Patents, Designs, and Trade-marks Amendment Act, 1939, expired or will expire on or after the 3rd day of September, 1939, and before the 31st day of December, 1947. The Commissioner may also extend for such period and subject to such conditions (if

any) as he thinks fit, the time limited by or under the Act or any regulations thereunder for doing any act in relation to a convention application made by virtue of an extension of time under this regulation.

4. A patent, or the copyright in a design, granted or registered upon an application made by virtue of an extension of time granted under Regulation 3 of these regulations shall be subject to such conditions as the Commissioner may think fit to impose for the protection of—

- (a) Any person who after the 3rd day of September, 1939, and before the 1st day of January, 1947, has undertaken in good faith the exploitation of the invention or design; or
- (b) An inventor who proves that the invention was independently invented by him, and who has made an application for a patent in New Zealand for that invention after the 3rd day of September, 1939, and before the 1st day of January, 1946, even if he has not effectively exploited the invention, provided that he establishes that exploitation of the invention was prevented by the war; or
- (c) The legal representative or assignee of any inventor to whom the last preceding paragraph applies.

5. The conditions (if any) imposed by the Commissioner under the last preceding regulation shall be inserted in the Form of Patent, or in the certificate of registration, as the case may be.

6. In addition to any conditions which may be imposed under Regulation 4 of these regulations, every patent granted by virtue of an extension of time granted under Regulation 3 of these regulations, and every renewal of a patent effected under Regulation 7 of these regulations, shall be subject to the condition that any person (in this regulation referred to as the third party) who has availed himself of the subject-matter of the patent after the 3rd day of September, 1939, in the case of a grant of a patent, and after the due date of renewal in the case of a renewal of a patent, and in either case before the 1st day of January, 1947 (in this regulation referred to as the interim period), shall be deemed to have done so with the licence of the patentee, and shall thereafter be entitled to continue to use the invention, without infringement, to the following extent, namely:—

- (a) In so far as the complete specification of the patent claims an article (other than an apparatus, machine, or plant, or part thereof, as specified under paragraph (b) of this regulation) and any article so claimed has been manufactured by the third party during the interim period, the article so manufactured during the interim period may at all times be used or sold:
- (b) In so far as the complete specification claims some apparatus, machine, or plant, or part thereof, for the production or supply of an article or service, the apparatus, machine, or plant, or part thereof, so claimed which has been manufactured or installed by the third party during the interim period and the products thereof may at all times be used or sold, and in the event of that apparatus, machine, or plant, or part thereof, being impaired by wear or tear or accidentally destroyed, a like licence shall extend to any replacement thereof and to the products of that replacement:

(c) In so far as the complete specification claims any process for the making or treating of any article, any apparatus, machine, or plant which during the interim period has been manufactured or installed by the third party or exclusively or mainly used by him for carrying on the process may continue to be so used, and the products thereof may be used or sold, and in the event of the apparatus, machine, or plant being impaired by wear or tear or accidentally destroyed a like licence shall extend to the process when carried on in any replacement of the apparatus, machine, or plant and to the products of the process so carried on.

7. The Commissioner may extend until a date not later than the 30th day of June, 1948, the time limited by or under the Act, or by or under the regulations thereunder for accomplishing any act, fulfilling any formality, paying any fee, and generally satisfying any obligation, in order that nationals of an Agreement country may—

- (a) Preserve rights already acquired on the 3rd day of September, 1939, or acquired after that date ; or
- (b) Obtain rights which, if the Second World War had not taken place, might have been acquired since that date in consequence of an application made before the 30th day of June, 1947.

8. The period commencing on the 3rd day of September, 1939, and ending on the 30th day of June, 1947, shall not be taken into account in calculating the period which must elapse before application can be made under section 29 or section 62 of the Act to prevent an abuse of monopoly rights in respect of a patent or design :

Provided that no such application shall be made before the 30th day of June, 1949.

W. O. HARVEY,
Clerk of the Executive Council.

Issued under the authority of the Regulations Act, 1936.

Date of notification in *Gazette* : 18th day of December, 1947.

These regulations are administered in the Department of Justice.