

## Serial Number 1948/136



**THE PATENTS, DESIGNS, TRADE-MARKS, AND COPYRIGHT  
(TREATIES OF PEACE WITH ITALY, ROUMANIA, BULGARIA,  
HUNGARY, AND FINLAND) REGULATIONS 1948**

B. C. FREYBERG, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington, this 11th day of  
August, 1948

Present :

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Treaties of Peace (Italy, Roumania, Bulgaria, Hungary, and Finland) Act, 1947, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby make the following regulations.

REGULATIONS

1. These regulations may be cited as the Patents, Designs, Trade-marks, and Copyright (Treaties of Peace with Italy, Roumania, Bulgaria, Hungary, and Finland) Regulations 1948.

2. In these regulations, unless the context otherwise requires,—

“Applicant” means any country which, or person who, notifies the Commissioner under Regulation 3 of these regulations of an intention to accomplish any act or make any application under these regulations :

“Commissioner” means, in relation to patents, designs, and trade-marks, the Commissioner of Patents, Designs, and Trade-marks and, in relation to copyright, the Registrar of Copyright :

“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 :

“Industrial, literary, and artistic property” means any invention, design, or trade-mark within the meaning of the Patents, Designs, and Trade-marks Act, 1921-22, and any literary, dramatic, musical, or artistic work in which copyright subsists under the Copyright Act, 1913 :

“Minister” means the Minister of Justice :

“Said countries” means Italy, Roumania, Bulgaria, Hungary, and Finland.

3. (1) In the case of each of the said countries, that country or any national of that country may notify the Commissioner on or before the 4th day of January, 1949, of its or his intention before that date or any extended date allowed by the Minister or the Commissioner--

- (a) To accomplish all necessary acts for obtaining or preserving in New Zealand rights in industrial, literary, and artistic property which were not capable of accomplishment owing to the existence during the Second World War of a state of war between New Zealand and that country :
- (b) To make a convention application for the grant of a patent, or for the registration of a design or trade-mark in any case where the first foreign application was filed in one of the said countries at any time during the Second World War while a state of war existed between New Zealand and that country, or (in the case of a convention application for the grant of a patent) within twelve months before the outbreak of the said state of war, or (in the case of a convention application for the registration of a design or trade-mark) within six months before the outbreak of the said state of war.

(2) Every such notification shall be accompanied by a form duly completed and appropriate to the particular proceedings, or as specified in the Patents, Designs, and Trade-marks Act, 1921-22, and in the regulations made thereunder, and by the fee prescribed therein, but without extension fees or other penalty of any kind.

4. Where the Commissioner is satisfied that any such notification relates to an intention to accomplish acts, or to make a convention application, to which subclause (1) of the last preceding regulation relates, and where the applicant is Italy, Roumania, Bulgaria, or Hungary, or any national of any of those countries, the Commissioner shall forthwith cause to be published in the *Patent Office Journal* a notice setting forth--

- (a) The name of the applicant, and in the case of a person his address and nationality :
- (b) The nature of the proceedings intended to be taken :
- (c) Such other particulars as the Commissioner may consider necessary or desirable.

5. Within two months after the date of the publication in the *Patent Office Journal* of the notice mentioned in the last preceding regulation, any person (hereinafter referred to as the objector) may lodge with the Commissioner a notice of objection upon the ground that the proceedings to be taken in accordance with the notification given under Regulation 3 of these regulations are contrary to the national interest. The notice of objection shall include a full statement of the facts upon which the objection is made and shall be accompanied by a duplicate which the Commissioner shall forthwith send to the applicant.

6. Within one month after the receipt of the said duplicate the applicant may send a statement in answer to the said notice of objection to the Commissioner, who shall thereupon refer the matter to the

Minister for his decision. The Minister may direct that the proceedings be discontinued, or may allow all acts to which paragraph (a) of subclause (1) of Regulation 3 of these regulations applies to be completed or may allow a convention application to which paragraph (b) of that subclause applies to be continued, in conformity in any such case with the Patents, Designs, and Trade-marks Act, 1921-22, and the regulations thereunder, subject to such modifications and to such terms and conditions (if any) as the Minister in his absolute discretion may determine.

7. If the applicant is Finland, or a national of Finland, or in any other case if no notice of objection under Regulation 5 of these regulations is lodged with the Commissioner within the prescribed time, the Commissioner may allow all acts to which paragraph (a) of subclause (1) of Regulation 3 of these regulations applies to be completed, and may allow a convention application to which paragraph (b) of that subclause applies to be continued, in conformity in any such case with the provisions of the Patents, Designs, and Trade-marks Act, 1921-22, and the regulations thereunder, subject, however, to such modifications as the Commissioner may deem fit.

8. (1) In addition to any conditions which may be imposed by the Minister under Regulation 6 of these regulations, every patent granted and every renewal of a patent effected under 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 during the period before the date of the application in New Zealand in the case of a grant of a patent, or during the period after the due date of renewal and before the date of the application in New Zealand in the case of a renewal of a patent (each of such periods being referred to in this regulation 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.

(2) Any person who, in a case to which the last preceding subclause does not apply, had in good faith acquired, before the 24th day of December, 1947, in a case affecting the rights of Italy or a national of Italy, or before the 31st day of December, 1947, in a case affecting any other of the said countries or any national of any other of the said countries, any industrial, literary, or artistic property rights which conflict with rights restored under these regulations or with rights obtained with the priority provided thereunder, or had in good faith manufactured, published, reproduced, used, or sold the subject-matter of those rights, may continue, without any liability for infringement, to exercise those rights, and may continue or resume the manufacture, publication, reproduction, use, or sale of the subject-matter of those rights.

**9.** If for any reason the proceedings, other than an application for the grant of letters patent or for the registration of a design or trade-mark, are discontinued, the Commissioner may refund to the applicant any fees deposited by him under Regulation 3 of these regulations.

**10.** An applicant or an objector, if not resident in New Zealand, shall appoint an agent in New Zealand, who must be authorized in writing to the satisfaction of the Commissioner, and the Commissioner may require an applicant, objector, or agent to give an address for service within New Zealand.

**11.** The period commencing on the date of the outbreak of war between New Zealand and each of the said countries and ending on the 30th day of June, 1949, shall not be taken into account in calculating the period which must elapse before application can be made, or petition presented, under section 29 or section 62 of the Patents, Designs, and Trade-marks Act, 1921-22, or section 28 of the Patents, Designs, and Trade-marks Amendment Act, 1939, to prevent an abuse of monopoly rights in respect of a patent or design, or removal of a trade-mark from the Register on the ground of non-use, by that country or by any national of that country.

**12.** In the case of each of the said countries no proceedings shall be commenced after the 4th day of January, 1949, by that country or by any national of that country against any person for any illegal infringement of the rights of that country or of any national of that country in any industrial, literary, or artistic property at any time during the second world war while a state of war existed between New Zealand and that country.

13. (1) The Commissioner shall have power to refuse any application for the grant of a patent for any invention relating to—

- (a) Any article mentioned in Annex III of the Treaty of Peace with Bulgaria to which paragraph 6 of Annex IV of the said Treaty applies :
- (b) Any article mentioned in Annex III of the Treaties of Peace with Finland, Hungary, and Roumania respectively to which Part A of Annex IV of the respective treaty applies :
- (c) Any article mentioned in Annex XIII of the Treaty of Peace with Italy to which Part A of Annex XV of the said Treaty applies.

(2) The Commissioner shall have power to revoke a patent for any invention to which the last preceding subclause applies :

Provided that he shall not exercise that power adversely to an applicant or patentee without giving the applicant or patentee an opportunity of being heard, if the applicant or patentee so requires.

T. J. SHERRARD,  
Clerk of the Executive Council.

---

Issued under the authority of the Regulations Act, 1936.  
Date of notification in *Gazette* : 12th day of August, 1948.  
These regulations are administered in the Department of Justice.