

1956/159

**THE PATENTS (UNITED STATES OF AMERICA)
REGULATIONS 1956**

C. W. M. NORRIE, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 2nd day of October 1956

Present:

THE RIGHT HON. S. G. HOLLAND PRESIDING IN COUNCIL

PURSUANT to the Patents Act 1953, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

REGULATIONS

1. These regulations may be cited as the Patents (United States of America) Regulations 1956.

2. Where an invention has been communicated to the New Zealand Government or any individual, firm, or corporation in New Zealand at the request of that Government under the conditions set out in an agreement between New Zealand and the United States of America for the security of military information, and an application for a patent for the same invention is made by the person from whom the invention has been so communicated or by the personal representative or assignee of that person, then—

- (a) The communication, or the publication, making, use, exercise, or vending of the inventions in consequence of the communication, shall not prejudice the application for a patent or invalidate the grant of a patent thereon; and
- (b) The application, and any patent granted thereon, shall have priority over any other application for a patent for the invention or any part thereof if that other application was made by a person who obtained the invention or part thereof in consequence of such communication as aforesaid, in the manner and to the extent set out in regulation 4 hereof.

3. A claim to protection and priority under regulation 2 of these regulations shall be addressed in writing to the Commissioner of Patents, and may be made at any time before the acceptance of the complete specification filed in connection with the application for a patent but not later than 12 months from the date of the filing of the application

for the patent, and shall be accompanied by a statutory declaration giving information as to the date on which and the person to whom the invention was communicated and a description of the information or article so communicated. The claim and declaration shall be open to public inspection on acceptance of the complete specification, as a notice that priority as of the date of communication is claimed, but the notice shall not in itself be deemed to indicate that the claim to priority has been proved to the satisfaction of the Commissioner; and in any proceedings under the Patents Act 1953 or the Patents Regulations 1954 the Commissioner or the Court may require the applicant or the patentee, as the case may be, to furnish such further proof as he or it may deem necessary. When the claim is laid open to public inspection, the date of communication claimed shall be advertised in the *Journal* and, on the grant of a patent on the application, shall be entered on the register of patents.

4. When a claim to priority is made pursuant to regulation 3 hereof and any claim of the specification of the invention forming the subject of the application or patent is for the same subject-matter as that claimed in a claim of the specification of any other application for a patent which when granted would have a priority date within the meaning of section 11 of the Patents Act 1953 later than the date of the communication but not later than the priority date of any claim of the specification of the patent applied for with the said claim to priority, the Commissioner or the Court, as the case may be, may on satisfactory proof of communication of the invention, treat the date of communication as the priority date in any proceedings under the Patents Act 1953 or the Patents Regulations 1954—

(a) Based on prior publication of or claiming of the invention in such other application or patent; or

(b) Based on prior claiming in the application or patent in respect of which the claim to priority has been made of the invention claimed in the other application or patent—

if the invention or part thereof claimed in the other application or patent was obtained in consequence of that communication:

Provided that the invention or part shall be presumed to have been obtained in consequence of the communication unless the applicant or the patentee of the other application or patent proves that the invention or part was made in New Zealand before the date of communication or was independently devised in New Zealand.

5. (1) In the case of an application by any individual, firm, or corporation resident or carrying on business in the United States of America at any time subsequent to the 2nd day of September 1952, or the personal representative or assignee of such an individual, firm, or corporation, for a patent which if granted would have claims in the relative specification having a priority date subsequent to the 2nd day of September 1952, there shall be included, among the grounds upon which notice of opposition to the grant of the patent may be given or an application for revocation of a patent granted thereon may be made, the ground that the invention or some part thereof was obtained in consequence of a communication by or at the request of the New Zealand Government to the Government of the United States of America or to any person, firm, or corporation in the United States of America under an agreement between the two Governments.

(2) For the purposes of this regulation an invention shall be presumed to have been obtained in consequence of the communication if the priority date of any claim of the specification filed in relation thereto is later than the date of the communication unless the applicant or the patentee, as the case may be, proves that he or the person from whom his title to the invention is derived introduced the invention or a part thereof into New Zealand before the date of the communication or devised the invention or a part thereof in New Zealand.

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

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations provide for the protection of inventions communicated in New Zealand in accordance with an agreement between the Government of New Zealand and the Government of the United States of America for the security of military information.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 4 October 1956.

These regulations are administered in the Department of Justice.