

ACT 657
PATENTS ACT, 2003

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ACT 657 PATENTS ACT, 20031(1)

AN ACT to provide for the protection of inventions and other related matters.

PART ONE

Patents

1. Definitions of patents and inventions

- (1) Patent means the title granted to protect an invention.
- (2) Invention means an idea of an inventor which permits in practice the solution to a specific problem in the field of technology.

(3) An invention may be, or may relate to, a product or a process.

2. Matter excluded from patent protection

The following inventions, even if they are inventions within the meaning of section 1, are excluded from patent protection:

- (a) discoveries, scientific theories and mathematical methods;
- (b) schemes, rules or methods for doing business, performing purely mental acts or playing games;
- (c) methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practised on the human or animal body; this provision shall not apply to products for use in any of those methods;
- (d) inventions, the prevention within the country of the commercial exploitation of which is necessary to protect public order or morality, which includes,
 - (i) the protection of human, animal or plant life or health; or
 - (ii) the avoidance of serious prejudice to the environment, if the exclusion is not made because the exploitation is prohibited;
- (e) plants and animals other than micro-organisms;
- (f) biological processes for the protection of plants or animals other than non-biological and micro-biological processes; and
- (g) plant varieties.

3. Patentable inventions

(1) An invention is patentable if it is new, involves an inventive step and is industrially applicable.

(2) An invention is new if it is not anticipated by a prior art.

(3) Prior art consists of everything disclosed to the public, anywhere in the world, by publication in tangible form or by oral disclosure, by use or in any other way, prior to the filing or, where appropriate, the priority date, of the application claiming the invention.

(4) For the purposes of subsection (3), disclosure to the public of the invention shall not be taken into consideration if it occurred within twelve months preceding the filing date or, where applicable, the priority date of the application, and if it was by reason or in consequence of acts committed by the applicant or the applicant's predecessor in title or of an abuse committed by a third party with regard to the applicant or the applicant's predecessor in title.

(5) An invention shall be considered as involving an inventive step if, having regard to the prior art relevant to the application claiming the invention and as defined in subsection (3), it would not have been obvious to a person having ordinary skill in the art.

(6) An invention shall be considered industrially applicable if it can be made or used in any kind of industry.

4. Right to patent; naming of inventor

(1) The right to a patent belongs to the inventor.

(2) Where two or more persons have jointly made an invention, the right to the patent belongs to them jointly.

(3) Where two or more persons have made the same invention independently of each other, the person whose application has the earliest filing date or, if priority is claimed, the earliest validly claimed priority date shall have the right to the patent, as long as the application is not withdrawn, abandoned or rejected.

(4) The right to a patent may be assigned, transferred or devolve by succession.

(5) Where an invention is made in execution of an employment contract, the right to the patent belongs in the absence of any contractual provisions to the contrary, to the employer.

(6) Where the invention has an economic value much greater than the parties could have reasonably foreseen at the time of the conclusion of the contract, the inventor shall be entitled to a special remuneration, which shall be fixed by the court in the absence of an agreement between the parties.

(7) The inventor shall be named as the inventor in the patent, unless in a special written declaration signed by the inventor and addressed to the Registrar the inventor indicates a desire not to be named.

(8) Any promise or undertaking by the inventor made to any person to the effect that the inventor will make the declaration shall be without legal effect.

5. Application

(1) An application for the registration of a patent shall be filed with the Registrar and shall contain a request, a description, one or more claims, one or more drawings where required, and an abstract.

(2) The application shall be subject to the payment of the prescribed application fee.

(3) The request shall contain a petition to the effect that a patent be granted, the name of and other prescribed data concerning the applicant, the inventor and the agent, if any, and the title of the invention.

(4) Where the applicant is not the inventor, the request shall be submitted with a statement justifying the applicant's right to the patent.

(5) The description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person having ordinary skill in the art, and shall, in particular, indicate, at least, one mode known to the applicant for carrying out the invention.

(6) The claim or claims shall define the matter for which protection is sought.

(7) Claims shall be clear and concise and shall be fully supported by the description.

(8) Drawings shall be required when they are necessary for the understanding of the invention.

(9) The abstract shall merely serve the purpose of technical information; in particular, it shall not be taken into account for the purpose of interpreting the scope of the protection.

(10) The applicant may, up to the time when the application is in order for grant, withdraw the application at any time during its pendency.

6. Unity of invention; amendment and division of application

(1) The application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

(2) The applicant may, up to the time when the application is in order for grant, amend the application, but the amendment shall not go beyond the disclosure in the initial application.

(3) The applicant may, up to the time when the application is in order for grant, divide the application into two or more applications namely divisional applications, but each divisional application shall not go beyond the disclosure in the initial application.

(4) Each divisional application is entitled to the filing date and, where applicable, the priority date of the initial application.

(5) The fact that a patent has been granted on an application that does not comply with the requirement of unity of invention under subsection (1) is not a ground for the invalidation of the patent.

7. Right of priority

(1) An application may contain a declaration claiming the priority, as provided for in the Schedule, of one or more earlier national, regional or international applications filed by an applicant or the applicant's predecessor in title

- (a) in or for any state party to the Convention; or
- (b) in or for any member of the World Trade Organisation.

(2) Where the application contains a declaration under subsection (1), the Registrar may request that the applicant furnish, within the prescribed time limit, a copy of the earlier application certified as correct by the Patent Office with which it was filed.

(3) The effect of the declaration shall be as provided in the Schedule.

(4) Where the Registrar finds that the requirements under this section have not been fulfilled, the declaration shall be considered not to have been made.

8. Information concerning corresponding foreign applications and patents

(1) The applicant shall, at the request of the Registrar, furnish the Registrar with the date and number of any foreign application.

(2) The applicant shall, at the request of the Registrar, furnish the Registrar with the following documents relating to any of the foreign applications referred to in subsection (1):

- (a) a copy of any communication received by the applicant concerning the results of any search or examination carried out in respect of the foreign application;
- (b) a copy of the patent granted on the basis of the foreign application;
- (c) a copy of any final decision rejecting the foreign application or refusing the grant requested in the foreign application.

(3) The applicant shall, at the request of the Registrar, furnish the Registrar with a copy of any final decision invalidating the patent granted on the basis of the foreign application referred to in subsection (2).

(4) For the purposes of this section, “**foreign application**” means any application filed by the applicant abroad which relates to the same or essentially the same invention as that claimed in the application filed with the Patent Office.

9. Filing date; examination

(1) The Registrar shall accord as the filing date, the date of receipt of the application, if, at the time of

receipt, the documents filed contain

- (a) an express or implicit indication that the granting of a patent is sought;
- (b) indications allowing the identity of the applicant to be established;
- (c) a part which, on the face of it, appears to be a description of an invention.

(2) Where the Registrar finds that the application did not at the time of receipt, fulfil the requirements referred to in subsection (1), the Registrar shall invite the applicant to file the required correction and shall accord as the filing date, the date of receipt of the required correction.

(3) Where a correction is not made, the application shall be treated as if it had not been filed.

(4) Where the application refers to drawings, which are not included in the application, the Registrar shall invite the applicant to furnish the missing drawings.

(5) Where the applicant

- (a) complies with the invitation, the Registrar shall accord as the filing date, the date of receipt of the missing drawings; or
- (b) does not comply with the invitation, the Registrar shall accord as the filing date, the date of receipt of the application and any reference to the missing drawings shall be treated as non-existent.

(6) The Registrar, after according the filing date, shall examine whether the application complies with the requirements of section 5 subsections (1), (2), (3) and (4), and the other requirements designated as formal requirements and whether information requested under section 8, has been provided.

(7) Where the Registrar is of the opinion that the application complies with the requirements indicated in subsection (6), the Registrar shall cause the application to be examined as to whether the requirements of sections 1 (2) and (3), 2, 3, 5 (5), (6), (7), (8), and 6 have been complied with.

(8) For the purposes of subsection (7), the Registrar shall take into account

- (a) the results of any international search report and any international preliminary examination report established under the Treaty in relation to the application; or
- (b) a search and an examination report submitted under section 8 (2) (a) which relates to a corresponding foreign application; or
- (c) a final decision submitted under section 8 (2) (c) on refusal to grant a patent on a corresponding foreign application; or
- (d) a search and an examination report which was carried out upon the request of the Registrar by an external search and an examination authority.

10. Grant of patent; changes in patents

(1) Where the Registrar finds that

- (a) the application complies with the requirements under section 9 (6) and (7), the Registrar shall grant the patent;
- (b) the application does not comply with the requirements under section 9 (6) and (7), the Registrar shall refuse the application and notify the applicant of the refusal.

(2) Where the Registrar grants a patent, the Registrar shall

- (a) publish a reference of the grant of the patent in the prescribed manner;
- (b) issue to the applicant a certificate of the grant of patent and a copy of the patent;
- (c) record the patent;
- (d) make available copies of the patent to the public, on payment of the prescribed fee.

(3) The Registrar shall, whenever possible, give a final decision on the application not later than two years after the commencement of the examination referred to in section 9 (7).

(4) The Registrar shall, on the request of the owner of the patent, make changes in the text or drawings of the patent in order to limit the extent of the protection.

(5) The Registrar shall not make a change where the change would result in the disclosure contained in the patent going beyond the disclosure contained in the initial application on the basis of which the patent is granted.

11. Rights conferred by patent

(1) The exploitation of the patented invention in the country by a person other than the owner of the patent shall require the owner's consent.

(2) For the purposes of this section, “**exploitation**” of a patented invention means any of the following acts:

- (a) where the patent has been granted in respect of a product,
 - (i) making, importing, offering for sale, selling and using the product, or
 - (ii) stocking the product for the purposes of offering for sale, selling or using,
- (b) where the patent has been granted in respect of a process,
 - (i) using the process, or
 - (ii) doing any of the acts referred to in paragraph (a) in respect of a product obtained directly by means of the process.

(3) The owner of the patent shall, in addition to any other rights, remedies or actions available to the owner, have the right, subject to subsection (4) and section 13, to institute court proceedings against any person who infringes the patent by performing, without the consent of the owner, any of the acts referred to in subsection (2) or who performs acts which may lead to infringement.

(4) The rights under the patent shall not extend to

- (a) acts in respect of articles which have been put on the market in any country by the owner of the patent or with the owner's consent; or
- (b) the use of articles on aircraft, vehicles or vessels of other countries which temporarily or accidentally enter the airspace, territory or waters of Ghana; or
- (c) acts done only for experimental purposes relating to a patent invention; or
- (d) acts performed by a person who in good faith, before the filing or, where priority is claimed, the priority date of the application on which the patent is granted in the country, was using the invention or was making effective and serious preparations for the use.

(5) The right of prior use referred to in paragraph (d) may be transferred or devolve only together with

the enterprise or business, or with that part of the enterprise or business, in which the use or preparation for use has been made.

(6) At the request of the owner of the patent or of a licensee if the licensee has requested the owner to institute court proceedings for a specific relief and the owner has refused or failed to do so, the court may grant an injunction to prevent infringement or an imminent infringement, award damages and grant any other relief provided for in the general law.

(7) For the purpose of civil proceedings in respect of the infringement of rights of the owner, if the subject matter of a patent is a process for obtaining a product, the court may order the defendant to prove that the process used to obtain an identical product is different from the patented process.

(8) Any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process if the product obtained by the patented process is new.

12. Duration; annual fees

(1) Subject to subsection (2), a patent shall expire twenty years after the filing date of the application for the patent.

(2) In order to maintain the patent or patent application, an annual fee shall be paid in advance to the Registrar for each year, starting one year after the filing date of the application for grant of the patent.

(3) A period of grace of six months shall be allowed for the late payment of the annual fee on payment of the prescribed surcharge.

(4) Where an annual fee is not paid in accordance with this section, the patent application shall be deemed to have been withdrawn or the patent shall lapse.

13. Exploitation by Government or authorised person

(1) Where

- (a) public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy so requires, or
- (b) a judicial or administrative body has determined that the manner of exploitation, by the owner of the patent or the owner's licensee, is anti-competitive, and the Minister is satisfied that the exploitation of the invention in accordance with this subsection would remedy that practice,

the Minister may decide that, even without the consent of the owner of the patent, a Government agency or a third person designated by the Minister may exploit the invention.

(2) The exploitation of the invention shall be limited to the purpose for which it was authorised and shall be subject to the payment to the owner of an adequate remuneration, taking into account the economic value of the Minister's decision as determined in the decision, and where a decision has been taken under subsection (1) (b), the need to correct anti-competitive practices.

(3) The Minister shall take a decision after hearing the owner of the patent and any interested person if that person wishes to be heard.

(4) Upon a request of the owner of the patent, of the Government agency or of the third person authorised to exploit the patented invention, the Minister may, after hearing the parties, if either or both wish to be heard, vary the terms of the decision authorising the exploitation of the patented invention to

the extent that changed circumstances justify the variation.

(5) Upon the request of the owner of the patent, the Minister shall terminate the authorisation if the Minister is satisfied, after hearing the parties, if either or both wish to be heard, that the circumstances which led to the Minister's decision have ceased to exist and are unlikely to recur or that the Government agency or third person designated by the Minister has failed to comply with the terms of the decision.

(6) Despite subsection (5), the Minister shall not terminate the authorisation if the Minister is satisfied that the need for adequate protection of the legitimate interests of the Government agency or third person designated by the Minister justifies the maintenance of the decision.

(7) Where a third person has been designated by the Minister, the authorisation may only be transferred with the enterprise or business of that person or with the part of the enterprise or business within which the patented invention is being exploited.

(8) The authorisation shall not exclude

(a) the conclusion of licence contracts by the owner of the patent; or

(b) the continued exercise, by the owner of the patent, of the owner's rights under section 11 (2).

(9) A request for the Minister's authorisation shall be accompanied with evidence that the owner of the patent has received, from the person seeking the authorisation, a request for a contractual licence, but that person has been unable to obtain the licence on reasonable commercial terms and conditions and within a reasonable time.

(10) Subsection (9) does not apply in cases of national emergency or other circumstances of extreme urgency but in such cases, the Registrar shall notify the owner of the patent of the Minister's decision as soon as reasonably practicable.

(11) The exploitation of the invention by the Government agency or third person designated by the Minister shall be predominantly for the supply of the market in the country.

(12) The exploitation of an invention in the field of semi-conductor technology shall only be authorised for public non-commercial use or where a judicial or administrative body has determined that the manner of exploitation of the patented invention, by the owner of the patent or the owner's licensee, is anti-competitive and if the Minister is satisfied that the issuance of the non-voluntary licence would remedy the practice.

(13) A person aggrieved by the Minister's decision under this section may appeal to the court.

14. Non-voluntary licences

(1) On a request, made to the court after the expiration of a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent, whichever period expires last, the court may issue a non-voluntary licence if the court is satisfied that the patented invention is not exploited or is insufficiently exploited, by working the invention locally or by importation, in the country.

(2) Notwithstanding subsection (1), a non-voluntary licence shall not be issued if the owner of the patent satisfies the court that circumstances exist which justify the non-exploitation or insufficient exploitation of the patented invention in the country.

(3) The decision for issuing the non-voluntary licence shall specify

(a) the scope and function of the licence,

(b) the time limit within which the licensee shall begin to exploit the patented invention, and

- (c) the adequate remuneration to be paid to the owner of the patent and the conditions of payment.
- (4) The beneficiary of the non-voluntary licence may
- (a) exploit the patented invention in the country according to the terms specified in the decision issuing the licence, or
 - (b) commence the exploitation of the patented invention within the time limit specified in the decision, and
 - (c) exploit the patented invention sufficiently.
- (5) Where
- (a) the invention claimed in a patent cannot be exploited in the country without infringing a patent granted on the basis of an application benefiting from an earlier filing or where appropriate, priority date, and
 - (b) where the invention claimed in the later patent involves an important technical advance of considerable economic importance in relation to the invention claimed in the earlier patent,

the court, upon the request of the owner of the later patent, may issue a non-voluntary licence to the extent necessary to avoid infringement of the earlier patent.

(6) Where a non-voluntary licence is issued under subsection (5), the court, upon the request of the owner of the earlier patent, shall issue a non-voluntary licence in respect of the later patent.

(7) In the case of a request for the issuance of a non-voluntary licence under subsections (5) and (6), subsection (3) shall apply with such modifications as are necessary with the proviso that no time limit needs to be specified.

(8) In the case of a non-voluntary licence issued under subsection (5), the transfer may be made only with the later patent, or, in the case of a non-voluntary licence issued under subsection (6), only with the earlier patent.

(9) The request for the issuance of a non-voluntary licence is subject to payment of the prescribed fee.

(10) Section 13 (4) to (13) shall apply with such modifications as are necessary.

15. Invalidation

- (1) An interested person may request the court to invalidate a patent.
- (2) The court shall invalidate the patent
 - (a) if the person requesting the invalidation proves that a person has not complied with any of the requirements of sections 1 (2) and (3), 2, 3, 5 (5), (6), (7) or (8); or
 - (b) if the owner of the patent is not the inventor or the inventor's successor in title.
- (3) An invalidated patent, or claim or part of a claim, shall be regarded as null and void from the date of the grant of the patent.
- (4) The registrar of the court shall notify the Registrar of the final decision of the Court.
- (5) The Registrar shall record the decision and publish a reference of it in the prescribed manner.

Utility Model Certificates

16. Applicability of provisions relating to patents

(1) Subject to section 17, the provisions of Part one shall apply, with such modifications as are necessary, to utility model certificates or applications for utility model certificates.

(2) Where the right to a patent conflicts with the right to a utility model certificate in the case referred to in section 4 (3), the provision shall apply as if the word “patent” were replaced by the words “patent or utility model certificate”.

17. Special provisions relating to utility model certificates

(1) An invention qualifies for a utility model certificate if it is new and industrially applicable.

(2) Section 3 (1) and (5) does not apply in the case of an invention for which a utility model certificate is requested.

(3) Section 9 (7) does not apply in the case of applications for utility model certificates.

(4) A utility model certificate shall expire, without a possibility of renewal, at the end of the seventh year after the date of the filing of the application.

(5) With the exception of subsection (3), section 12 (1) does not apply in the case of utility model certificates.

(6) In proceedings under section 15, the court shall invalidate the utility model certificate on the following grounds

- (a) that the claimed invention did not qualify for a utility model certificate, having regard to subsection (1), section 3 (2), (3) and (6);
- (b) that the description and the claims do not comply with the requirements prescribed by section 5 (5), (6) or (7);
- (c) that any drawing which is necessary for the understanding of the invention has not been furnished; or
- (d) that the owner of the utility model certificate is not the inventor or the inventor’s successor in title.

(7) Section 15 (2) does not apply in the case of a utility model certificate.

18. Conversion of patent applications or applications for utility model certificates

(1) Prior to the grant or refusal of a patent, an applicant for a patent may, upon payment of the prescribed fee, convert the applicant’s application into an application for a utility model certificate, which shall be accorded the filing date of the initial application.

(2) Prior to the grant or refusal of a utility model certificate, an applicant for a utility model certificate may, upon payment of the prescribed fee, convert the applicant’s application into a patent application, which shall be accorded the filing date of the initial application.

(3) An application may not be converted under subsection (1) more than once.

PART THREE

International Applications under the Treaty

19. Filing date and effects of international application designating Ghana

An international application designating Ghana shall, subject to this Part, be treated as an application for a patent or utility model certificate filed under this Act having as its filing date the international filing date accorded under the Treaty.

20. Patent Office as receiving office

The Patent Office shall act as receiving office in respect of an international application filed with it by a resident or national of Ghana.

21. Filing of international applications

An international application shall be filed in a prescribed language with the Patent Office as receiving office and the prescribed transmittal fee shall be paid to the Patent Office.

22. Patent Office as designated office

The Patent Office shall act as a designated office in respect of an international application in which Ghana is designated for the purposes of obtaining a national patent or utility model certificate under this Act.

23. Patent Office as elected office

The Patent Office shall act as an elected office in respect of an international application in which Ghana is designated as referred to in section 22 if the applicant elects Ghana for the purposes of international preliminary examination under Chapter Two of the Treaty.

24. National processing

The Patent Office as a designated office or elected office shall not commence the processing of an international application designating Ghana before the expiration of the time limit referred to in section 25 except if the applicant complies with the requirements of that section and files with the Patent Office an express request for early commencement of the processing.

25. Entering national phase

The applicant in respect of an international application designating Ghana shall, before the expiration of the time limit applicable under Article 22 or 39 of the Treaty or of a later time limit as may be prescribed in the Regulations

- (a) pay the prescribed fee to the Patent Office, and
- (b) where the international application was not filed or published in the prescribed language, the applicant shall submit an appropriate translation of the international application containing the prescribed contents.

26. Failure to enter national phase

Where the applicant does not comply with the requirements of section 25 within the time limit referred to in that section, the international application shall be considered withdrawn for the purposes of this Act.

27. Harare Protocol

An international application may designate Ghana for a patent under the Harare Protocol.

28. Processing international applications in accordance with the Treaty

(1) The Patent Office shall process an international application in accordance with

- (a) the Treaty and regulations made under the Treaty; and
- (b) the administrative instructions made under the regulations referred to in paragraph (a).

(2) Where the provisions of the Treaty, the regulations made under the Treaty and the administrative instructions made under the regulations conflict with this Act, the Treaty, or the regulations or the administrative instructions shall apply.

PART FOUR

General Provisions

29. Changes in ownership; licence contracts

(1) A change in the ownership of a patent, or the registration of a utility model certificate, or an application for a patent or a utility model certificate, shall be in writing.

(2) At the request of an interested party, the Registrar shall record the fact of the change and, except in the case of an application, the Registrar shall publish the change in the prescribed manner.

(3) The change shall have no effect against third parties until it has been recorded.

(4) A licence contract concerning a patent or a registered utility model certificate, or an application shall be submitted to the Registrar who shall keep its contents confidential but shall record it and publish a reference to it in the prescribed manner.

(5) The licence contract shall have no effect against third parties until it has been recorded.

30. Representation

Where an applicant's ordinary residence or principal place of business is outside the country, the applicant shall be represented by a legal practitioner resident and practicing in the country.

31. Patent Registry

(1) The Patent Registry shall be located at the Registrar-General's Department of the Ministry of Justice.

(2) The Registry shall be responsible for the registration of patents and for the administration of registered patents.

(3) The Registry shall be headed by the Registrar-General who shall be assisted by such Assistant Registrars as may be appointed in accordance with article 195 of the Constitution.

(4) The Registrar may delegate any functions of the office of the Registrar.

32. Register

(1) The Registry shall maintain a register for patents and utility model certificates.

(2) All the recordings provided for under this Act shall be recorded in the register.

(3) The register shall be open to the public and a person may obtain an extract from the register in the prescribed manner.

(4) The Registrar shall cause to be published in the Official Bulletin, *Gazette* or any print media any publications required under this Act.

33. Corrections of errors

The Registrar may correct any error of translation or transcription, clerical error or mistake in any application or document filed with the Patent Office or in any recording effected pursuant to this Act.

34. Extension of time

Where the Registrar is satisfied that the circumstances justify it, the Registrar may, upon receiving a written request, extend the time for doing any act or taking any proceeding under this Act, upon notice to the parties concerned and upon the terms as the Registrar may direct.

35. Exercise of discretionary powers

The Registrar shall, in the exercise of a discretionary power conferred by this Act, comply with article 296 of the Constitution.

36. Appeals

An aggrieved person may appeal to the court against a decision taken by the Registrar under this Act.

37. Offences

Subject to sections 11 (4), 13 and 14, a person who knowingly performs any of the acts referred to in section 11 (2) in the country without the consent of the owner commits an offence and is liable to a fine not exceeding two thousand penalty units or to imprisonment for a term not exceeding two years.

38. Application of International Treaties

The provisions of any International Treaties in respect of industrial property to which the country is a party shall apply to matters dealt with by this Act and, in case of a conflict with this Act, the International Treaty shall prevail over the Act.

39. Regulations

(1) The Minister may by Legislative Instrument make regulations for the effective implementation of this Act.

- (2) Without limiting subsection (1), the regulations may prescribe
- (a) the fees for any act for which payment is required under this Act;
 - (b) the details relating to the inspection of registers;
 - (c) time limits for the submission of specific things under this Act;
 - (d) additional details concerning the processing of international applications;
 - (e) measures to enable the Minister to stimulate, encourage, support inventive and innovative activities and to promote patenting of inventions and utility models by citizens;
 - (f) any matter required or authorised to be prescribed by regulations.

40. Administrative instructions

The Registrar may issue administrative instructions relating to the procedures under this Act.

41. Interpretation

In this Act, unless the context otherwise requires,

“**Court**” means the High Court;

“**designate**” and “**designated office**” have the same meaning as in the Patent Co-operation Treaty;

“**elected**” and “**elected office**” have the same meaning as in the Patent Co-operation Treaty;

“**Harare Protocol**” means the Protocol on Patents and Industrial Designs adopted in 1982 in Harare, Zimbabwe and ratified by the Government of Ghana on 30th September, 1983;

“**industry**” covers handicraft, agriculture, fishery and services;

“**international application**”, “**international filing date**” and “**international preliminary examination**” have the same meaning as in the Patent Co-operation Treaty;

“**Minister**” means the Attorney-General and Minister for Justice;

“**Paris Convention**” means the Paris Convention for the Protection of Industrial Property of 20th March, 1883, as revised;

“**Treaty**” means the Patent Co-operation Treaty done at Washington on 19th June 1970;

“**priority date**” means the date of the earlier application that serves as the basis for the right of priority provided for in the Paris Convention;

“**receiving office**” has the same meaning as in the Treaty;

“**register**” means the register referred to in section 32;

“**Registrar**” means the Registrar-General.

42. Repeals and savings

(1) The Patent Law, 1992 (P.N.D.C.L. 305A) is hereby repealed.

(2) Subsidiary legislation made under the law shall remain in force until revoked.

(3) Notwithstanding the repeal of the Patent Law, patents granted under the law shall remain in force but shall be deemed to have been granted under this Act.

(4) Patents granted shall remain in force for the unexpired period of the term of protection provided for under this Act, subject to the payment of annual maintenance fees provided for under this Act.

(5) The Minister may make any further transitional or saving provisions which appear to the Minister to be necessary or desirable.

Schedule

ARTICLE 4

[A to F, H and I. Patents, Utility Models, Industrial Designs, Marks, Investors' Certificates: Right of Priority—G. Patents: Division of the Application]

A. (1) Any person who has duly filed an application for a patent, or for the registration of a utility model, or of an industrial design, or of a trademark, in one of the countries of the Union, or his successor in title, shall enjoy, for the purpose of filing in the other countries, a right of priority during the periods hereinafter fixed.

(2) Any filing that is equivalent to a regular national filing under the domestic legislation of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognised as giving rise to the right of priority.

(3) By a regular national filing is meant any filing that is adequate to establish the date on which the application was filed in the country concerned, whatever may be subsequent fate of the application.

B. Consequently, any subsequent filing in any of the other countries of the Union before the expiration of the periods referred to above shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, the publication or exploitation of the invention, the putting on sale of copies of the design, or the use of the mark, and such acts cannot give rise to any third-party right or any right of personal possession. Rights acquired by third parties before the date of the first application that serves as the basis of the right of priority are reserved in accordance with the domestic legislation of each country of the Union.

C. (1) The periods of priority referred to above shall be twelve months for patents and utility models, and six months for industrial designs and trademarks.

(2) These periods shall start from the date of filing of the first application; the day of filing shall not be included in the period.

(3) If the last day of the period is an official holiday, or a day when the office is not open for the filing of applications in the country where protection is claimed, the period shall be extended until the first following working day.

(4) A subsequent application concerning the same object as a previous first application within the meaning of paragraph (2) above, filed in the same country of the Union, shall be considered as the first application, of which the filing date shall be the starting point of the period of priority, if, at the time of filing the subsequent application, the said previous application has been withdrawn, abandoned, or refused, without having been laid open to public inspection and without leaving any rights outstanding, and if it has not yet served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.

D. (1) Any person desiring to take advantage of the priority of a previous filing shall be required to

make a declaration indicating the date of such filing and the country in which it was made. Each country shall determine the latest date on which such declaration must be made.

(2) These particulars shall be mentioned in the publications issued by the competent authority, and in particular in the patents and the specifications relating thereto.

(3) The countries of the Union may require any person making a declaration of priority to produce a copy of the application (description, drawings, etc.) previously filed. The copy, certified as correct by the authority that received such application, shall not require any authentication, and may in any case be filed, without fee, at any time within three months of the filing of the subsequent application. They may require it to be accompanied by a certificate from the same authority showing the date of filing, and by a translation.

(4) No other formalities may be required for the declaration of priority at the time of filing the application. Each country of the Union shall determine the consequences of failure to comply with the formalities prescribed by this Article, but such consequences shall in no case go beyond the loss of the right of priority.

(5) Subsequently, further proof may be required.

Any person who avails himself of the priority of a previous application shall be required to specify the number of that application; this number shall be published as provided for by paragraph (2), above.

E. (1) Where an industrial design is filed in a country by virtue of a right of priority based on the filing of a utility model, the period of priority shall be the same as that fixed for industrial designs.

(2) Furthermore, it is permissible to file a utility model in a country by virtue of a right of priority based on the filing of a patent application, and vice versa.

F. No country of the Union may refuse a priority or a patent application on the ground that the applicant claims multiple priorities, even if they originate in different countries, or on the ground that an application claiming one or more priorities contains one or more elements that were not included in the application or applications whose priority is claimed, provided that, in both cases, there is unity of invention within the meaning of the law of the country.

With respect to the elements not included in the application or applications whose priority is claimed, the filing of the subsequent application shall give rise to a right of priority under ordinary conditions.

G. (1) If the examination reveals that an application for a patent contains more than one invention, the applicant may divide the application into a certain number of divisional applications and preserve as the date of each the date of the initial application and the benefit of the right of priority, if any.

(2) The applicant may also, on his own initiative, divide a patent application and preserve as the date of each divisional application the date of the initial application and the benefit of the right of priority, if any. Each country of the Union shall have the right to determine the conditions under which such division shall be authorised.

H. Priority may not be refused on the ground that certain elements of the invention for which priority is claimed do not appear among the claims formulated in the application in the country of origin, provided that the application documents as a whole specifically disclose such elements.

I. (1) Applications for inventors' certificates filed in a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate shall give rise to the right of priority provided for by this Article, under the same conditions and with the same effects as applications for patents.

(2) In a country in which applicants have the right to apply at their own option either for a patent

or for an inventor's certificate, an applicant for an inventor's certificate shall, in accordance with the provisions of this Article relating to patent applicants, enjoy a right of priority based on an application for a patent, a utility model, or an inventor's certificate.

ARTICLE 4bis

[Patents: Independence of Patents Obtained for the Same Invention in Different Countries]

(1) Patents applied for in the various countries of the Union by nationals of countries of the Union shall be independent of patents obtained for the same invention in other countries, whether members of the Union or not.

(2) The foregoing provision is to be understood in an unrestricted sense, in particular, in the sense that patents applied for during the period of priority are independent, both as regards the grounds for nullity and forfeiture, and as regards their normal duration.

(3) The provision shall apply to all patents existing at the time when it comes into effect.

(4) Similarly, it shall apply, in the case of the accession of new countries, to patents in existence on either side at the time of accession.

(5) Patents obtained with the benefit of priority shall, in the various countries of the Union, have a duration equal to that which they would have, had they been applied for or granted without the benefit of priority.

ARTICLE 4ter

[Patents: Mention of the Inventor In The Patent]

The inventor shall have the right to be mentioned as such in the patent.

ARTICLE 4quarter

[Patents: Patentability in Case of Restrictions of Sale by Law]

The grant of a patent shall not be refused and a patent shall not be invalidated on the ground that the sale of the patented product or of a product obtained by means of a patented process is subject to restrictions or limitations resulting from the domestic law.

Endnotes

1 (Popup - Footnote)

1. The Act was assented to on 31st December, 2003 and notified in the *Gazette* on 31st December, 2003.