

THE INVENTIONS AND DESIGNS ACT, 1888.

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ACT No. V OF 1888.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL,
(Received the assent of the Governor General on the 16th March,
1888.)

An Act to consolidate and amend the law relating to the Protection of Inventions and Designs.

WHEREAS it is expedient to consolidate and amend the law relating to the protection of inventions and designs ; It is hereby enacted as follows :—

1. (1) This Act may be called the Inventions and Designs Act, 1888.

(2) It shall extend to the whole of British India ; and

(3) It shall come into force on the first day of July, 1888.

2. (1) The enactments described in the first schedule are hereby repealed to the extent specified in the third column thereof.

(2) But this repeal of enactments shall not affect any exclusive privilege acquired, or any conditions or restrictions imposed with respect to any such privilege, or any right or liability accrued or incurred, under any of those enactments before the commencement of this Act, or any relief in respect of any such privilege, right or liability.

(3) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

3. The remainder of this Act is divided into Parts, as follows :—

PART I.—INVENTIONS.

PART II.—DESIGNS.

PART I.

Title, extent
and com-
mencement.

Repeal.

Division of
Act into
Parts.

(Part I.—Inventions.—Section 4.)

PART I.

INVENTIONS.

4. In this Part, unless there is something repugnant in the subject or context,—

(1) “invention” includes an improvement :

(2) “inventor” does not include the importer into British India of a new invention unless he is the actual inventor :

(3) “applicant” means a person who has applied under this Part for leave to file a specification of an invention, whether he has filed the specification or not :

(4) “assign” includes a grantee of the exclusive privilege of making, selling or using an invention, or of authorising others so to do, during the term for which the privilege is to continue or may be extended, or for any shorter term :

(5) “inventor,” “actual inventor” and “applicant” include the executors, administrators or assigns of an inventor, actual inventor and applicant, as the case may be :

(6) “manufacture” includes any art, process or manner of producing, preparing or making an article, and also any article prepared or produced by manufacture :

(7) “write” includes print, lithograph, photograph, engrave, and every other mode in which words or figures can be expressed on paper or on any substance :

(8) “Secretary” means a Secretary to the Government of India appointed by the Governor General in Council to discharge the functions of the Secretary under this Act, and includes any under-secretary, assistant-secretary or other officer subordinate to the Government of India to the extent to which such officer may be authorized by general or special order of the Governor General in Council to discharge any of those functions :

(9) “District

(Part I.—Inventions.—Sections 5-6.)

(9) "District Court" has the meaning assigned to that expression by the Code of Civil Procedure : and XIV of 188

(10) "High Court" has the meaning assigned to that expression by the Code of Criminal Procedure, X of 1882. 1882, in reference to proceedings against European British subjects.

Application
for leave to
file specifica-
tion.

5. (1) The inventor of a new manufacture, whether he is a British subject or not, may apply to the Governor General in Council for leave to file a specification thereof.

(2) The application must be in writing signed by the applicant and in the form or to the effect of the second schedule if the inventor has not obtained a patent in the United Kingdom, and in the form or to the effect of the third schedule if he has obtained a patent in the United Kingdom.

(3) It must state the name, occupation and address of the applicant, and, where a patent has been obtained in the United Kingdom, the date of the patent and the date of the actual sealing thereof, and must describe with reasonable precision and detail the nature of the invention, and of the particular novelty whereof it consists, and be supplemented by such further particulars relating to the invention, and by such drawings or photographs illustrative thereof, as the Governor General in Council may see fit to require from the applicant.

(4) If in any case it appears to the Governor General in Council that an application ought to be further supplemented by a model of anything alleged to constitute an invention, he may require the applicant to furnish such a model neatly and substantially made of durable material and of dimensions not exceeding those, if any, specified in the requisition therefor.

Order to file
specification.

6. (1) Upon an application under the last foregoing section the Governor General in Council may, after such inquiry as he thinks fit, make an order authorising

(Part I.—Inventions.—Section 7.)

ising the applicant to file a specification of the invention.

(2) Before making an order under sub-section (1), the Governor General in Council may direct that the application be referred for inquiry and report to any person whom he thinks fit.

(3) When such enquiry and report are made by a person who is not in the service of the Government, there shall be payable to that person by the applicant such fee as the Governor General in Council, after considering the report, may determine.

(4) When an application is to be referred to such a person, the applicant shall deposit, in such place and within such time as the Governor General in Council may by rule or otherwise prescribe, such sum as will, in the opinion of the Secretary, be sufficient to defray any fee which is likely to be determined under sub-section (3).

(5) If the sum is not deposited in the place and within the time prescribed, the application may be rejected.

(6) If the fee as determined by the Governor General in Council exceeds the sum so deposited, an order shall not be made under sub-section (1) until the applicant has paid the balance of the fee.

(7) If the sum deposited exceeds the fee so determined, the excess shall be refunded to the applicant.

7. (1) If two or more inventors apply on the same day for leave to file specifications of inventions which appear to the Governor General in Council to be identical or so similar as to be practically identical, the Governor General in Council may, in his discretion, authorise both or all the applicants, subject to the other provisions of this Part, to file specifications of their respective inventions.

Applications
in respect of
contempo-
raneous in-
ventions.

(2) If they apply on different days for leave to file specifications of such inventions as aforesaid, the applicant who applied on the first of the different days shall

(Part I.—Inventions.—Section 8.)

shall be deemed to have a preferential claim to an order authorising the filing of his specification.

Acquisition
and contin-
uance of
exclusive
privilege.

8. (1) If within six months from the date of an order under section 6, sub-section (1), or within such further time, not exceeding three months, as the Governor General in Council, in his discretion, may, on cause shown to his satisfaction and on payment of the fee prescribed in that behalf in the fourth schedule, see fit to allow, the applicant causes a specification of his invention to be filed in manner by this Part required, and the fee prescribed in the fourth schedule in respect of the filing of the specification to be paid, the applicant shall, subject to the other provisions of this Part, be entitled to the exclusive privilege of making, selling and using the invention in British India, and of authorising others so to do, for a term of fourteen years from the date of the filing of the specification.

(2) But an exclusive privilege in respect of an invention of a new manufacture shall, notwithstanding anything in sub-section (1), cease if the inventor fails to pay, within the time limited in that behalf by the fourth schedule, any fee prescribed in that schedule in respect of the continuance of the privilege.

(3) If, nevertheless, in any case, by accident, mistake or inadvertence, an inventor fails to pay any such fee within the time so limited, he may apply to the Governor General in Council for an enlargement of the time for making the payment.

(4) Thereupon the Governor General in Council may enlarge the time accordingly, on payment of the fee prescribed in that behalf in the fourth schedule and subject to the following conditions, namely :—

(a) the time for making a payment shall not in any case be enlarged for more than three months; and

(b) if any suit is instituted in respect of an infringement of the exclusive privilege committed

(Part I.—Inventions.—Sections 9-11.)

mitted after a failure to make a payment within the time limited for the making thereof and before the enlargement of that time, the Court disposing of the suit may, if it thinks fit, refuse to award or give any damages in respect of the infringement.

9. (1) A specification filed under this Part must be in writing signed by the applicant, and must set forth the precise invention in respect of which the applicant claims to become entitled to an exclusive privilege.

Form and contents of specification.

(2) If the specification is of an invention which is an improvement only, it must by explicit language distinguish between what is old and what is claimed to be new.

(3) Every specification must explain the principle of the invention set forth therein and the best mode in which the applicant has contemplated applying that principle, and must describe the manner of making and using the invention in such full, clear, concise and exact terms as to enable any persons skilled in the art or science to which the invention appertains, or with which it is most closely connected, to make or use the same.

10. Every application for leave to file a specification, and every specification filed under this Part, must be left with, or sent by post to, the Secretary, and the date of the delivery or receipt thereof shall be endorsed thereon and recorded in his office.

Mode of filing application and specification.

11. (1) At the time of delivering or sending the specification for the purpose of its being filed, the applicant shall cause to be delivered or sent therewith to the Secretary as many copies thereof, not being fewer than four, as may be required by the rules for the time being in force under this Part.

Delivery and distribution of copies of specification.

(2) One of these copies shall be retained by the Secretary, and one shall be sent to the Governor of Fort St. George in Council, one to the Governor of

Bombay

(Part I.—Inventions.—Sections 12-13.)

Bombay in Council, one to the Chief Commissioner of Burma, and the others, if any, to such authorities as the Governor General in Council may appoint in this behalf.

(3) The copies of the specification which are sent under sub-section (2) to the authorities mentioned or referred to in that sub-section shall be open to the inspection of any person at all reasonable times at places to be appointed by those authorities.

Register of
inventions.

12. (1) A book, to be called the register of inventions, shall be kept in the office of the Secretary wherein shall be entered and recorded every application for leave to file a specification, every order made on any such application, every specification filed in pursuance thereof, and every subsequent proceeding relating to the invention described therein.

(2) Applications for leave to file a specification shall be numbered consecutively in the order in which they are delivered or received, and be dated as of the day of their delivery or receipt, and shall be entered in the register of inventions in the order of their respective numbers.

(3) A reference shall be made in that register, in the margin of the entry of each application, to every order on or in respect of the application, to the specification, if any, filed in pursuance thereof, and to every subsequent proceeding relating to the invention which forms the subject of the application.

Address-
book.

13. (1) Another book, to be called the address-book, shall be kept in the office of the Secretary wherein any person filing a specification under this Part, or any person in whom an exclusive privilege acquired under this Part, or any share or interest therein, may become vested, may from time to time cause to be stated some place in British India where notice of any rule or proceeding relating to the exclusive privilege may be served on him.

(2) A reference to each entry in the address-book shall be made in the register of inventions in the
margin

(Part I.—Inventions.—Sections 14-15.)

margin of the entry in that register of the application for leave to file the specification.

14. (1) Every entry in the register of inventions or address-book, and every document entered and recorded in the register, shall, for the purposes of the law of evidence for the time being in force, be deemed to be a public document and shall be open to the inspection of any person at all reasonable times at the office of the Secretary.

Provisions with respect to the register and book.

(2) The books kept under section 11 and section 35 of Act No. XV of 1859 (*an Act for granting exclusive Privileges to Inventors*) shall be deemed to be parts of the register of inventions and address-book respectively.

15. (1) The inventor of a new manufacture may, at any time not more than one year and not less than six months before the time limited for the expiration of an exclusive privilege acquired under section 8, apply to the Governor General in Council for an extension of the privilege for a further term.

Extension of exclusive privilege.

(2) When an application is made under sub-section (1), the Governor General in Council may, if he thinks fit, refer it to a High Court for report.

(3) The Court to which the application is referred shall, in making its report, have regard to the nature and merits of the invention in relation to the public, to the profits made by the inventor as such, and to all the circumstances of the case.

(4) The procedure on the reference shall be such as the Court thinks fit, and may include the issue of citations calling upon persons claiming to have any interest in the reference to appear before the Court on the day on which the reference is to be considered, or on any day to which the consideration thereof may be adjourned, and make with respect thereto any representation which they may see fit in relation to any of the matters to which the Court is required by the last foregoing sub-section to have regard in making its report.

(5) If

(Part I.—Inventions.—Sections 16-17.)

(5) If the Governor General in Council is of opinion, or, where a reference has been made under sub-section (2), if the Court reports, that the inventor has been inadequately remunerated by his exclusive privilege, the Governor General in Council may, on payment of the fee prescribed in that behalf in the fourth schedule, make an order extending the term of the privilege for a further term not exceeding seven or, in exceptional cases, fourteen years from the expiration of the first term of fourteen years.

(6) But an exclusive privilege of which the term has been extended under the last foregoing sub-section shall, notwithstanding anything in that sub-section, cease if the inventor fails to pay before the expiration of each year of such extended term the fee prescribed in the schedule aforesaid in respect of the continuance of the privilege.

Imposition of conditions with respect to exclusive privilege.

16. An order under section 6, sub-section (1), authorizing the filing of a specification, or under section 15, sub-section (5), extending the term of an exclusive privilege, may be made subject to such conditions as the Governor General in Council thinks expedient.

Exclusive privilege to bind the Government.

17. (1) Subject to any conditions imposed under the last foregoing section—

- (a) with respect to the filing, by a person employed in the service of Her Majesty in India, of the specification of a manufacture invented by him in the course of his employment, or
- (b) with respect to the extension, in favour of any person, of the term of an exclusive privilege,

an exclusive privilege acquired under this Part shall have to all intents the like effect as against Her Majesty as it has against a subject.

(2) But the officers or authorities administering any department of the service of Her Majesty may, by themselves, their agents, contractors or others, at any time

(Part I.—Inventions.—Sections 18-19.)

time after the delivery or receipt of the application for leave to file the specification of an invention, use the invention for the services of the Government on terms to be before or after the use thereof agreed on, with the approval of the Governor General in Council, between those officers or authorities and the inventor, or, in default of such agreement, on such terms as may be settled by the Governor General in Council.

18. (1) If, after the filing of the specification, the applicant has reason to believe that through mistake or inadvertence he has erroneously made any mis-statement in his application or specification or included therein something which at the date of the delivery or receipt of his application was not new or whereof he was not the inventor, or that the specification is in any particular defective or insufficient, he may apply to the Governor General in Council for leave to file a memorandum pointing out the mis-statement or disclaiming any part of the alleged invention, or for leave to file an amended specification, as the case may be.

Application for leave to file memorandum or amended specification.

(2) The application must be in writing signed by the applicant, and must state how the error, defect or insufficiency occurred and that it was not fraudulently intended.

(3) Upon the application the Governor General in Council may make an order allowing the memorandum or amended specification to be filed.

(4) The provisions of section 6 with respect to applications, and of sections 9 and 11 with respect to specifications and copies thereof, shall apply, so far as they can be made applicable, to applications and to amended specifications, respectively, made and filed under this section.

19. An amended specification filed under the last foregoing section shall, except as to any suit or proceeding relating to the exclusive privilege which may be pending at the time of the filing of the amended specification, have the same effect as if it had been the specification first filed :

Effect of amended specification.

Provided

(Part I.—Inventions.—Sections 20-22.)

Provided that nothing in an amended specification shall be construed to extend or enlarge an exclusive privilege before acquired.

Bar to exclusive privilege in certain cases.

20. A person shall not be entitled to an exclusive privilege under this Part—

- (a) if the invention is of no utility, or
- (b) if the invention, at the date of the delivery or receipt of the application for leave to file the specification thereof, was not a new invention within the meaning of this Part, or
- (c) if the applicant is not the inventor thereof, or
- (d) if the original or any amended specification does not fulfil the requirements of this Part, or
- (e) if the original or any subsequent application relating to the invention or the original or any amended specification contains a wilful or fraudulent mis-statement, or
- (f) if the application for leave to file the specification of the invention was made under this Part after the expiration of one year from the date of the acquisition of an exclusive privilege in respect of the invention in any place beyond the limits of British India and the United Kingdom.

Novelty of invention dependent on public use or knowledge thereof before application to file specification.

21. An invention shall be deemed a new invention within the meaning of this Part if it has not before the date of the delivery or receipt of the application for leave to file the specification thereof been publicly used in any part of British India or of the United Kingdom, or been made publicly known in any part of British India or of the United Kingdom by means of a written publication.

Effect of public use or knowledge of invention in fraud of inventor.

22. The public use or knowledge of an invention before the date of the delivery or receipt of the application for leave to file a specification thereof shall not be deemed a public use or knowledge within the meaning

(Part I.—Inventions.—Sections 23-25.)

meaning of this Part if the knowledge has been obtained surreptitiously or in fraud of the inventor or has been communicated to the public in fraud of the inventor or in breach of confidence:

Provided that the inventor has not acquiesced in the public use of his invention, and that, within six months after the commencement of that use, he applies for leave to file a specification.

23. Use of an invention in public by the inventor thereof, or by his servant or agent, or by any other person by his license in writing, for a period not exceeding one year immediately preceding the date of the delivery or receipt of his application for leave to file a specification thereof, or knowledge of the invention resulting from such use thereof in public, shall not be deemed a public use or knowledge within the meaning of this Part.

Effect of temporary use of invention in public by inventor or by his leave.

24. If an inventor who has obtained a patent for his invention in the United Kingdom causes an application for leave to file a specification of the invention under this Part to be delivered or received by the Secretary within twelve months from the date of the actual sealing of the patent, the invention shall be deemed a new invention within the meaning of this Part if it was not publicly used or known in any part of British India at or before the date of the application for the patent, notwithstanding that it may have been publicly used or known in some part of British India or of the United Kingdom before the date of the delivery or receipt of the application under this Part for leave to file the specification.

Effect of public use or knowledge of patented invention between application for patent and application to file specification.

25. If an inventor applies for leave to file a specification under this Part while his application for a patent is pending in the United Kingdom, and the interval between the date of his application for the patent and the date of the delivery or receipt of his application under this Part does not exceed twelve months, the invention shall not be deemed to have been publicly used, or made publicly known, within

Effect of like public use or knowledge of unpatented invention.

the

(Part I.—Inventions.—Sections 26-28.)

the meaning of this Part, by reason only of the invention having been used, or a description thereof having been published, in any part of British India or of the United Kingdom during the interval.

Effect of public use or knowledge of invention after admission to an exhibition.

26. If an inventor, being the exhibitor of his invention at an industrial or international exhibition, certified as such by the Governor General in Council, causes an application for leave to file a specification of the invention to be delivered to or received by the Secretary within six months from the date of the admission of the invention into that exhibition, the invention shall not be deemed to have been publicly used, or made publicly known, within the meaning of this Part, by reason only of the invention having at any time after admission into the exhibition been publicly used or made publicly known.

Cessation of exclusive privilege by order of the Government.

27. (1) An exclusive privilege acquired under this Part shall cease if the Governor General in Council declares the privilege, or the mode in which it is exercised, to be mischievous to the State, or generally prejudicial to the public.

(2) It shall also cease if a breach of any condition on which the applicant was authorised to file a specification, or on which the term of the exclusive privilege was extended, is on an application under this Part to a High Court proved to the satisfaction of that Court, and if the Governor General in Council thereupon declares the privilege to have ceased.

Cessation of exclusive privilege on revocation or expiration of patent.

28. (1) An exclusive privilege acquired under this Part in respect of an invention for which a patent has been obtained in the United Kingdom shall cease on the revocation or expiration of the patent.

(2) Such a privilege in respect of an invention for which a patent has not been obtained in the United Kingdom shall cease on the revocation or expiration of any patent or exclusive privilege which has been obtained or acquired for or in respect of the invention in any other country.

29. (1) An

(Part I.—Inventions.—Sections 29-30.)

29. (1) An inventor may institute a suit in the District Court against any person who, during the continuance of an exclusive privilege acquired by him under this Part in respect of an invention, makes, sells or uses the invention without his license, or counterfeits or imitates it.

Suit for infringement of exclusive privilege.

(2) The suit shall not be defended upon the ground of any defect or insufficiency of the specification of the invention, or upon the ground that the original or any subsequent application relating to the invention, or the original or any amended specification, contains a wilful or fraudulent mis-statement, or upon the ground that the invention is of no utility :

(3) Nor shall it be defended upon the ground that the plaintiff was not the inventor, unless the defendant shows that he himself is the actual inventor or has obtained from the actual inventor a right to make, sell or use the invention, or to counterfeit or imitate it, as the case may be :

(4) Nor shall it be defended upon the ground that the invention was not new, unless the defendant, or some person through whom he claims, has, before the date of the delivery or receipt of the application for leave to file the specification, publicly or actually used in some parts of British India or of the United Kingdom the invention or that part of it with respect to which the exclusive privilege is alleged to have been infringed.

30. Any person may apply to a High Court for a rule to show cause why the Court should not declare that an exclusive privilege in respect of an invention to be specified in the rule has not been acquired under this Part by reason of all or any of the objections following (to be specified in the rule), that is to say :—

Application to declare exclusive privilege in respect of an invention not to have been acquired.

(a) that the invention is of no utility, or

(b) that the invention was not, at the date of the delivery or receipt of the application for leave

(Part I.—Inventions.—Section 31.)

leave to file the specification, a new invention within the meaning of this Part, or

- (c) that the applicant was not the inventor thereof, or
- (d) that the original or any amended specification does not fulfil the requirements of this Part, or
- (e) that the applicant has knowingly or fraudulently included in the application for leave to file the specification or in the original or any amended specification, as part of his invention, something which was not new or whereof he was not the inventor, or
- (f) that the original or any subsequent application relating to the invention, or the original or any amended specification, contains a wilful or fraudulent mis-statement, or
- (g) that some part of the invention, or the manner in which that part is to be made and used, as described in the original or any amended specification, is not thereby sufficiently described, and that this insufficiency was fraudulent and is injurious to the public.

Like application as to part of an invention.

31. Any person may apply to a High Court for a rule to show cause why the Court should not declare that an exclusive privilege in respect of any part of an invention to be specified in the rule has not been acquired under this Part, by reason of all or any of the objections following (to be specified in the rule), that is to say:—

- (a) that that part of the invention is wholly distinct from the other parts thereof and is of no utility, or
- (b) that that part of the invention was not, at the date of the delivery of receipt of the application for leave to file the specification, a new invention within the meaning of this Part,

or

(c) that

(Part I.—Inventions.—Sections 32-34.)

- (c) that the applicant was not the inventor of that part of the invention, or
- (d) that that part of the invention, or the manner in which it is to be made and used, is not sufficiently described in the original or any amended specification, and that this insufficiency is injurious to the public.

32. The High Court may, irrespective of any provisions of the Code of Civil Procedure in this behalf, require a person applying for a rule under either of the two last foregoing sections to give security for the payment of all costs incurred or likely to be incurred by any person appearing to show cause against the rule.

Security for costs of application under either of the two last foregoing sections.

33. (1) Any person authorized by the Governor General in Council in this behalf may apply to a High Court for a rule to show cause why the question of the breach of any condition on which leave to file a specification has been granted, or any other question of fact on which the cessation of an exclusive privilege under section 27 may, in the judgment of the Governor General in Council, depend, should not be tried in the form of an issue directed by the Court.

Application on breach of condition.

(2) If the rule is made absolute, the Court, unless the breach or other matter of fact is admitted, may direct the issue to be tried and certify the result of the trial to the Governor General in Council.

34. (1) Notice of any rule obtained or proceeding taken under section 30, section 31 or section 33 shall be served on all persons appearing from the address-book to be proprietors of the exclusive privilege, or to have shares or interests therein, and it shall not be necessary to serve the notice on any other person.

Notice of proceedings to persons interested.

(2) The notice shall be deemed to be sufficiently served if a copy thereof is left at the place for the time being stated in the address-book, by delivering the copy to any person resident at or in charge of the place or, if there is no person resident at or in charge of the place, or if the place is not within the local limits

(Part I.—Inventions.—Sections 35-36.)

limits of the jurisdiction of the Court, by causing the notice to be sent to the place by post by a registered letter directed to the person to whom the notice is addressed.

Framing
issue for trial
before other
Court.

35. (1) The High Court may, if it thinks fit, direct an issue for the trial, before itself or any other High Court, or any District Court, of any question of fact arising upon an application under section 30, section 31 or section 33, and the issue shall be tried accordingly.

(2) If the issue is directed to another Court, the finding shall be certified by that Court to the Court directing the issue.

(3) If the issue is directed to a District Court, the finding of that Court shall not be subject to appeal, but the evidence taken upon the trial shall be recorded, and a copy thereof, certified by the Judge of the Court, shall be transmitted, together with any remarks which he may think fit to make thereon, to the High Court, and the High Court may thereupon act upon the finding of the District Court, or dispose of the application upon the evidence recorded, or direct a new trial, as the justice of the case may require.

Order on
application.

36. (1) If it appears to the High Court at the hearing of an application under section 30 or section 31 that, by reason of any of the objections specified in the rule, the exclusive privilege in the invention or in any part thereof has not been acquired, the Court shall make an order accordingly, and thereupon the applicant shall, so long as the order continues in force, cease to be entitled to the exclusive privilege.

(2) If it appears to the High Court, at the hearing of any such application as last aforesaid, that the applicant has, in the description of his invention in the application for leave to file a specification thereof or in the original or any amended specification, erroneously included something which at the date of the delivery

OF

(Part I.—Inventions.—Section 37.)

or receipt of the application for leave to file the specification was not new or whereof he was not the inventor, or that the specification is in any particular defective or insufficient, but that the error, defect or insufficiency was not fraudulently intended, the Court may adjudge the exclusive privilege to have been acquired and to be valid, save as to the part thereof affected by the error, defect or insufficiency: or

(3) If it appears to the High Court that the error, defect or insufficiency can be amended without injury to the public, the Court may adjudge the exclusive privilege in respect of the whole of the invention to be valid, and may, upon such terms as it thinks reasonable, order the specification to be amended in any particular in which it is erroneous, defective or insufficient; and thereupon the applicant shall, within a time to be limited by the Court for the purpose, file in the office of the Secretary a specification amended according to the order.

(4) The provisions of section 18 with respect to the distribution and disposal of copies of amended specifications, and of section 19 with respect to the effect of such specifications, shall apply, so far as they can be made applicable, to an amended specification filed under this section.

(5) An exclusive privilege in respect of an invention shall not be defeated upon the ground that the application for leave to file the specification of the invention contains a mis-statement, unless the mis-statement was wilful or fraudulent.

37. (1) In a suit for the infringement of an exclusive privilege acquired under this Part the plaintiff shall deliver with his plaint particulars of the breaches complained of in the suit, and the defendant shall deliver a written statement of the particulars of the grounds, if any, upon which he means to contend that the plaintiff is not entitled to an exclusive privilege in respect of the invention.

Delivery of
particulars.

(2) In like manner, upon an application to a High Court

(Part I.—Inventions.—Section 38.)

Court under section 30, section 31 or section 33, the person making the application shall deliver particulars of the objections or grounds on which he means to rely.

(3) At the hearing of any such suit or application, or at the trial of any issue arising out of any such application, evidence shall not be allowed to be given in proof of any breach of the exclusive privilege, or of any ground impeaching the validity of that privilege, or of any objection or ground affecting such a privilege, unless such breach or other matter as aforesaid has been stated in the particulars delivered under this section.

(4) If it is alleged that the invention was publicly used or known before the date of the delivery or receipt of the application for leave to file the specification thereof, the places where and the manner in which the invention was so publicly used or known shall be stated in the particulars.

(5) Notwithstanding anything in the foregoing portion of this section, the Court in which the suit or application is pending, or an issue arising out of the application is being tried, may allow the plaintiff or defendant respectively to amend the particulars delivered under this section upon such terms as it thinks fit.

Title of
actual in-
ventor to
exclusive
privilege in
case of fraud.

38. If, in a suit instituted in the District Court at any time within fourteen years from the date of the filing of a specification of an invention under this Part, the actual inventor proves to the satisfaction of the Court that the applicant was not the actual inventor, and that at the time of the application for leave to file the specification the applicant knew or had reason to believe that the knowledge of the invention was obtained by himself or by some other person surreptitiously or in fraud of the actual inventor, or by means of a communication made in confidence by the actual inventor to him or to any person through whom he derived the knowledge, the Court may

(Part I.—Inventions.—Sections 39-40.)

may make a decree declaring an exclusive privilege in respect of the invention to be vested, subject to the other provisions of this Part, in the actual inventor for a term of fourteen years from the date on which the specification was filed, and requiring the applicant to account for and pay over to the actual inventor the profits derived by him from the invention or so much of those profits as the Court, having regard to the degree of diligence exerted by the actual inventor in proceeding under this section and to all the other circumstances of the case, may see fit to require the applicant to pay.

39. A Court making a decree in a suit under section 29 or section 38, or an order on an application under section 30, section 31 or section 33, shall send a copy of the decree or order, as the case may be, to the Secretary, who shall cause an entry thereof and reference thereto to be made in the register of inventions and against any entry in the address-book affected thereby.

Transmission of copies of decrees and orders to Secretary.

40. In the following cases, namely :—

- (a) when an exclusive privilege acquired under this Part has ceased under section 8 or section 15 by reason of a fee in respect of the continuance of the privilege not having been paid within the time limited by the fourth schedule for the payment thereof, and the period, if any, within which an order might have been made for enlarging the time for the making of the payment has expired ;
- (b) when an exclusive privilege acquired under this Part has been declared by the Governor General in Council under section 27 to have ceased ;
- (c) when an exclusive privilege acquired under this Part has ceased under section 28 by reason of the revocation or expiration of a patent or exclusive privilege ;

Registration of cessation of exclusive privilege.

(d) when

(Part I.—Inventions.—Sections 41-42.)

- (d) when the whole or any part of an exclusive privilege acquired under this Part has ceased under section 36 in consequence of an order under that section ;
- (e) when an exclusive privilege has been declared by a decree to have vested in an actual inventor under section 38 ;
- (f) when an exclusive privilege acquired under this Part has ceased by reason of the expiration of the term for which it was acquired ;

the Secretary shall cause an entry with respect to the cessation or vesting of the exclusive privilege to be made in the register of inventions, and a reference to that entry to be made in the margin of the entry in that register of the application for leave to file the specification of the invention.

Rectification of register of inventions or address-book.

41. (1) If any person is aggrieved by an entry in the register of inventions or address-book, or by the omission of an entry therefrom, and a proceeding is not provided in the foregoing portion of this Part whereby the register or book may be rectified, he may apply to a High Court for an order for the rectification of the register or book, and the Court may make such order on the application as it thinks fit.

(2) A copy of the order shall be forwarded by the Court to the Secretary, who shall cause an entry thereof and reference thereto to be made in the register of inventions and against any entry in the address-book affected thereby.

(3) When the Secretary is a party to an application under this section, the costs of another party thereto shall not be adjudged to be payable by the Secretary.

Power to High Court to stay proceedings on or dismiss certain applications.

42. A High Court to which an application has been made under section 30, section 31, section 33 or section 41 may stay proceedings on, or dismiss, the application if in its opinion the application would be disposed

(Part I.—Inventions.—Sections 43-46.)

disposed of more justly or conveniently by another High Court.

43. If on the petition of any person interested it is proved to the Governor General in Council that, by reason of an inventor who has acquired an exclusive privilege under this Part failing to grant licenses on reasonable terms,—

Power for Governor General in Council to require grant of licenses.

- (a) the exclusive privilege is not being worked in British India, or
- (b) the reasonable requirements of the public with respect to the invention cannot be supplied, or
- (c) any person is prevented from working or using to the best advantage an invention of which he is possessed,

the Governor General in Council may order the inventor to grant, or may himself on behalf of the inventor grant, licenses on such terms as to the amount of royalties, security for payment, or otherwise, as the Governor General in Council, having regard to the nature of the invention and the circumstances of the case, may deem just.

44. Any person for the time being entitled to an exclusive privilege under this Part, or to any share or interest in such a privilege, in any local area may, subject to the conditions of his title thereto, assign the privilege or such share or interest, as the case may be, for any place in or part of that local area.

Assignment for particular places.

45. If an applicant is absent from British India, an application for leave to file a specification, or a specification, or an application for leave to file a memorandum or amended specification, may, instead of being signed by the applicant under section 5, section 9 or section 18, as the case may be, be signed on behalf of the applicant by an agent in British India authorized by him in writing in that behalf.

Subscription of specifications and applications.

46. (1) An application under this Part for leave to file a specification, memorandum or amended specification

Verification of applications.

(Part I.—Inventions.—Sections 47-49.)

fication must be verified by the person making the application.

(2) If that person is absent from British India, the application may be verified by the agent who signs the application on his behalf.

(3) The verification must be signed by the person making it, and must be to the effect that the facts stated in the application are true to his knowledge, except as to matters stated on information and belief, and that as to those matters he believes them to be true.

Agents.

47. Subject to the provisions of the two last foregoing sections and of any other enactment for the time being in force, any act which is required or authorized by this Part to be done by any person may be done on his behalf by an agent in British India having authority in writing from that person so to do the act.

Fees.

48. (1) There shall be paid in respect of the several proceedings specified in the fourth schedule the fees in that schedule prescribed.

(2) The Governor General in Council may, if he thinks fit, reduce any of those fees and revoke or vary the reduction.

(3) The fees payable under this section shall be collected by means of stamps or otherwise as the Governor General in Council directs.

(4) A proceeding in respect of which a fee is payable under the fourth schedule shall be of no effect unless the fee has been paid.

Rules and forms.

49. (1) The Governor General in Council may make such rules and prescribe such forms as he thinks necessary for carrying out the purposes of this Part, and may alter or amend either of the forms in the second and third schedules.

(2) Rules under this section may provide, among other matters, for the printing of specifications, memoranda and amended specifications, and for the distribution or sale of printed copies thereof.

PART II.

(Part II.—Designs.—Sections 50-51.)

PART II.

DESIGNS.

50. In this Part, unless there is something repugnant in the subject or context,—

(1) “design” means some peculiar shape, configuration or form given to an article, or arrangement of lines or the like used on or with an article, but not the article itself:

(2) “copyright” means the exclusive right to apply a design to an article:

(3) the author of any new and original design shall be considered the “proprietor” thereof, unless he executed the work on behalf of another person for a good or valuable consideration, in which case that person shall be considered the “proprietor”, and every person acquiring for a good or valuable consideration a new and original design, or the right to apply the same to an article, either exclusively of any other person or otherwise, and also every person on whom the property in the design or the right to the application thereof shall devolve, shall be considered the “proprietor” of the design in the respect in which the same may have been so acquired, and to that extent, but not otherwise: and

(4) “Secretary”, “District Court” and “High Court” have the same meanings as in Part I.

51. (1) Any person, whether a British subject or not, claiming to be the proprietor of any new and original design not previously published in British India may apply to the Governor General in Council for an order for the registration of the design.

Application for order for registration of design.

(2) The application must be in writing in the form or to the effect of the fifth schedule, and must contain a statement of the nature of the design and be accompanied by as many copies of drawings, photographs or tracings thereof, not being fewer than four, as may be required by the rules for the time being in force under this Part.

(3) It

(Part II.—Designs.—Sections 52-55.)

(3) It must be left with, or sent by post to, the Secretary, and the date of the delivery or receipt thereof in the office of the Secretary shall be endorsed thereon and recorded in that office.

Registration
in register of
designs.

52. (1) Upon the application the Governor General in Council may, after such inquiry as he thinks fit, make an order authorizing the registration of the design.

(2) When an order has been made under sub-section (1), the Secretary shall cause the design to be registered in a book to be kept by him for the purpose and to be called the register of designs.

(3) The date of registration shall be recorded in the register.

Acquisition
of copyright.

53. When a design is registered, the proprietor thereof shall, subject to the other provisions of this Part, have copyright in the design during five years from the date of registration.

Marking
registered
designs.

54. (1) Before delivery on sale of any article to which a registered design has been applied, the proprietor of the design shall cause the article to be marked with the word "registered" either in full or in an abbreviated form.

(2) If he fails to cause the article to be so marked, the copyright in the design shall cease unless the proprietor shows that he took all proper steps to ensure the marking of the article.

Effect of ex-
hibiting un-
registered
designs at
exhibitions.

55. If the proprietor of a design exhibited at an industrial or international exhibition, certified as such by the Governor General in Council, causes an application for an order for the registration of the design to be delivered to or received by the Secretary within six months from the date of the admission of the design into that exhibition, the design shall not be deemed not to be a new and original design not previously published in British India within the meaning of section 51 by reason only of the design having been exhibited at the exhibition.

56. Any

(Part II.—Designs.—Sections 56-59.)

56. Any person in whom the copyright in a design has become vested may apply to the Secretary for the entry of his name in the register of designs as proprietor of the copyright, and the Secretary may, if he sees fit, cause the entry to be made.

Mutation of names in register of designs.

57. (1) The registered proprietor of a design may institute a suit in the District Court for the recovery of any damages arising from the application by any person to any article of the design or of any fraudulent or obvious imitation thereof for the purpose of sale, or from the publication, sale or exposure for sale by any person of any article to which the design, or any fraudulent or obvious imitation thereof, has been applied, that person knowing or having reason to believe that the proprietor had not given his consent to such application.

Suit for infringement of copyright.

(2) When the Court makes a decree in a suit under this section, it shall send a copy of the decree to the Secretary, who shall cause an entry thereof to be made in the register of designs.

58. When, from the expiration of the term of a copyright or from any other cause, the copyright in a design has ceased, the Secretary shall cause an entry with respect to the cessation of the right to be made in the register of designs.

Registration of cessation of copyright.

59. (1) A High Court may, on the application of any person aggrieved by an entry in the register of designs, or by the omission of an entry therefrom, make such order for the rectification of the register as it thinks fit.

Rectification of register of designs.

(2) An order under sub-section (1) may declare copyright in a design not to have been acquired.

(3) A copy of the order shall be forwarded by the Court to the Secretary, who shall cause an entry thereof to be made in the register of designs.

(4) When the Secretary is a party to an application under this section, the costs of another party thereto shall not be adjudged to be payable by the Secretary.

(Part II.—Designs.—Sections 60-62.)

Power to High Court to stay proceedings on, or dismiss, application for rectification of register.

60. A High Court to which an application has been made under the last foregoing section may stay proceedings on, or dismiss, the application if, in its opinion, the application would be disposed of more justly or conveniently by another High Court.

Application to this Part of certain provisions of Part I.

61. The provisions of the following portions of Part I, namely :—

- (a) section 11, with respect to copies of specifications,
 - (b) section 14, with respect to the register of inventions and the matters entered therein, and
 - (c) section 47, with respect to the performance by an agent of any act required or authorized by that Part to be done by a principal,
- shall, so far as they can be made applicable, apply, respectively, to—
- (a) copies of drawings, photographs or tracings accompanying an application for an order for the registration of a design in respect of which such an order has been made,
 - (b) the register of designs and the matters entered and documents referred to therein, and
 - (c) the performance by an agent of any act required or authorized by this Part to be done by a principal.

Fees.

62. (1) There shall be paid in respect of the several proceedings specified in the sixth schedule the fees in that schedule prescribed.

(2) The Governor General in Council may, if he thinks fit, reduce any of those fees and revoke or vary the reduction.

(3) The fees payable under this section shall be collected by means of stamps or otherwise as the Governor General in Council may direct.

1888.]

Inventions and Designs.

43

(Part II.—*Designs*.—Section 63. *The First Schedule*.—*Enactments repealed*. *The Second Schedule*.—*Application where Patent has not been obtained*.)

(4) A proceeding in respect of which a fee is payable under the sixth schedule shall be of no effect unless the fee has been paid.

63. The Governor General in Council may make such rules and prescribe such forms as he thinks necessary for carrying out the purposes of this Part, and may alter or amend the form in the fifth schedule.

Rules and forms.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Number and year.	Subject or title.	Extent of repeal.
XV of 1859 . . .	For granting exclusive Privileges to Inventors.	So much as has not been repealed.
XIII of 1872 . . .	Patterns and Designs Protection Act, 1872.	So much as has not been repealed.
XVI of 1883 . . .	Protection of Inventions Act, 1883.	The whole.
I of 1879	Indian Stamp Act, 1879	Article 48, Schedule I.

THE SECOND SCHEDULE.

APPLICATION WHERE PATENT HAS NOT BEEN OBTAINED.

(See sections 5 and 49.)

TO THE GOVERNOR GENERAL IN COUNCIL.

The application of (*here insert name, occupation and address*) for leave to file a specification under Part I of the *Inventions and Designs Act, 1888*.

1. The applicant is in possession of an invention for (*state the*

(*The Second Schedule.—Application where Patent has not been obtained. The Third Schedule.—Application where Patent has been obtained.*)

THE SECOND SCHEDULE.—*continued.*

the title of the invention); he is the inventor thereof (*or, as the case may be, the executor, administrator or assign of the inventor*); and, to the best of his information and belief, the invention is new within the meaning of Part I of the Inventions and Designs Act, 1888, and no circumstance exists which, if the applicant is authorized to file a specification and files it in accordance with that Part, will disentitle him to an exclusive privilege thereunder in respect of the invention.

2. The following is a description of the invention (*here describe it and the particular novelty whereof it consists*).

3. The applicant therefore applies for leave to file a specification of the invention pursuant to Part I of the Inventions and Designs Act, 1888.

(*Signature and verification.*)

THE THIRD SCHEDULE.

APPLICATION WHERE PATENT HAS BEEN OBTAINED.

(*See sections 5 and 49.*)

TO THE GOVERNOR GENERAL IN COUNCIL.

The application of (*here insert name, occupation and address*) for leave to file a specification under Part I of the Inventions and Designs Act, 1888.

1. The applicant (*or, as the case may be, A. B. of whom the applicant is the executor, administrator or assign*) has obtained a patent in the United Kingdom dated and sealed as of the
day of _____, and actually sealed on the
day of _____, for (*state the title of the invention*).

2. To the best of the information and belief of the applicant, the invention is new within the meaning of Part I of the Invention and Designs Act, 1888, and no circumstance exists which, if the applicant is authorized to file a specification and files it in accordance with that Part, will disentitle him to an exclusive privilege thereunder in respect of the invention.

3. The following is a description of the invention (*here describe it and the particular novelty whereof it consists*).

4. The applicant therefore applies for leave to file a specification of the invention pursuant to Part I of the Invention and Designs Act, 1888.

(*Signature and verification.*)

(The Fourth Schedule.—Fees (Inventions).)

THE FOURTH SCHEDULE.

FEES (Inventions).

(See sections 8, 15 and 48.)

	Rs.	A.	P.
(1) in respect of an application for leave to file a specification (section 5)	10	0	0
(2) in respect of the filing of a specification (section 8)	30	0	0
(3) in respect of an extension of the time for filing a specification (section 8)	20	0	0
(4) in respect of the continuance of an exclusive privilege (section 8)—			
(a) after the filing of the specification and before the expiration of the fourth year from the date of the filing thereof	50	0	0
(b) after the expiration of the fourth year and before the expiration of the fifth year from that date	50	0	0
(c) after the expiration of the fifth year and before the expiration of the sixth year from that date	50	0	0
(d) after the expiration of the sixth year and before the expiration of the seventh year from that date	50	0	0
(e) after the expiration of the seventh year and before the expiration of the eighth year from that date	50	0	0
(f) after the expiration of the eighth year and before the expiration of the ninth year from that date	100	0	0
(g) after the expiration of the ninth year and before the expiration of the tenth year from that date	100	0	0
(h) after the expiration of the tenth year and before the expiration of the eleventh year from that date	100	0	0
(i) after the expiration of the eleventh year and before the expiration of the twelfth year from that date	100	0	0

(j) after

*(The Fourth Schedule.—Fees (Inventions).)*THE FOURTH SCHEDULE—*continued.*

	Rs.	A.	P.
(j) after the expiration of the twelfth year and before the expiration of the thirteenth year from that date	100	0	0
Provided that the inventor may pay the sum total of the said fees in respect of the continuance of the exclusive privilege, or any part thereof short of the sum total, at any time before the same falls due.			
(5) in respect of an enlargement of the time for payment of a fee under article (4) of this schedule (section 8)—			
(i) if the enlargement does not exceed one month	10	0	0
(ii) if the enlargement exceeds one month, but does not exceed two months	25	0	0
(iii) if the enlargement exceeds two months	50	0	0
(6) in respect of an application for an extension of an exclusive privilege for a further term (section 15)	50	0	0
(7) in respect of an order extending the term of an exclusive privilege (section 15)	100	0	0
(8) in respect of the continuance of an exclusive privilege of which the term has been extended (section 15)	100	0	0
		to be paid	
		before the	
		expiration of	
		each year of	
		the extend-	
		ed term :	
Provided that the inventor may pay the sum total of the said fees in respect of the continuance of the exclusive privilege, or any part thereof short of the sum total, at any time before the same falls due.			
(9) in respect of an application for leave to file a memorandum or amended specification (section 18)	20	0	0

THE FOURTH SCHEDULE—concluded.

	Rs.	A.	P.
(10) in respect of a petition to the Governor General in Council for a compulsory license (section 43)	50	0	0
(11) for the inspection of any book or other document which is open to inspection under Part I	1	0	0
(12) for copies—			
(a) when the number of words copied does not exceed four hundred	1	0	0
(b) for every hundred words in excess of four hundred	0	4	0
(c) of drawings or photographs			cost accord- ing to agree- ment.
(13) for certifying copies—			
for every hundred words	0	2	0

THE FIFTH SCHEDULE.

APPLICATION FOR ORDER FOR REGISTRATION OF DESIGN.

(See sections 51 and 63.)

The application of (*here insert name, occupation and address*)
for an order for the registration of a design under Part II of the
Inventions and Designs Act, 1888.

1. The applicant claims to be the proprietor of the design of
which the nature is hereinafter stated.

2. To the best of his information and belief, that design is
within the meaning of Part II of the Inventions and Designs
Act, 1888, a new and original design not previously published
in British India.

3. copies of (*drawings*), (*photographs*), (*tracings*) of the
design accompany this application.

4. The following is a statement of the nature of the design
(*here describe its nature*).

5. The

(*The Fifth Schedule.—Application for Order for Registration of Design. The Sixth Schedule.—Fees (Designs).*)

THE FIFTH SCHEDULE.—*continued.*

5. The applicant therefore applies for an order for the registration of the design pursuant to Part II of the Inventions and Designs Act, 1888.

(*Signature.*)

THE SIXTH SCHEDULE.

FEES (*Designs*).

(*See section 62.*)

	Rs.	A.	P.
(1) in respect of an application for an order for the registration of a design (section 51)	10	0	0
(2) in respect of a mutation of names in the register of designs (section 56)	5	0	0
(3) for the inspection of any book or other document which is open to inspection under Part II	1	0	0
(4) for copies—			
(a) when the number of words copied does not exceed four hundred	1	0	0
(b) for every hundred words in excess of four hundred	0	4	0
(c) of drawings, photographs or tracingscost according to agreement.
(5) for certifying copies—			
for every hundred words	0	2	0