

Rep. by Act... 56 of 1974, S. 2 & Sch I

THE INDIAN PATENTS AND DESIGNS  
(AMENDMENT) ACT, 1968

No. 44 OF 1968

[31st August, 1968]

An Act further to amend the Indian Patents and Designs  
Act, 1911.

BE it enacted by Parliament in the Nineteenth Year of the  
Republic of India as follows:—

Short  
title and  
commence-  
ment.

1. (1) This Act may be called the Indian Patents and Designs  
(Amendment) Act, 1968.

(2) It shall be deemed to have come into force on the 10th day  
of July, 1968.

Insertion  
of new  
sections  
78B, 78C,  
78D and  
78E.

2. In the Indian Patents and Designs Act, 1911 (hereinafter re- 2 of 1911.  
ferred to as the principal Act), after section 78A, the following sec-  
tions shall be inserted, namely:—

Special  
provisions  
relating  
to appli-  
cations  
relevant  
for  
defence  
purposes.

78B. (1) Where, in respect of an application, whether made  
before or after the commencement of the Indian Patents and  
Designs (Amendment) Act, 1968, for a patent, it appears 44 of 1968.  
to the Controller that the invention is relevant for defence pur-  
poses, he may, notwithstanding anything contained in the fore-  
going provisions of this Act, at any time before the grant of the  
patent omit to do or delay the doing of anything which he would  
otherwise be required to do in relation to the application and  
also, issue directions prohibiting or restricting,—

(i) the publication of information with respect to the  
subject-matter of the application, or

(ii) the communication of such information to particular persons or classes of persons.

(2) Where the Controller issues any such directions as are referred to in sub-section (1), he shall give notice of the application and of the directions to the Central Government, and the Central Government shall, upon receipt of such notice, consider whether the publication of the invention would be prejudicial to the defence of India, and if, on such consideration, it appears to it that the publication of the invention would not so prejudice, give notice to the Controller to that effect, who shall thereupon revoke the directions and notify the applicant accordingly.

(3) The question whether an invention in respect of which directions have been issued under sub-section (1) continues to be relevant for defence purposes, shall be reconsidered by the Central Government within nine months from the date of issue of such directions and thereafter at intervals not exceeding twelve months, and if, on such reconsideration, it appears to the Central Government that the publication of the invention would no longer be prejudicial to the defence of India, it shall forthwith give notice to the Controller accordingly and the Controller shall thereupon revoke the directions previously issued by him.

(4) The result of every reconsideration under sub-section (3) shall be communicated to the applicant within such time and in such manner as may be prescribed.

(5) Any directions issued under rule 47 of the Defence of India Rules, 1962, in respect of an application for a patent for an invention such as is referred to in sub-section (1), and in force immediately before the commencement of the Indian Patents and Designs (Amendment) Act, 1968, shall, in so far as such directions are not inconsistent with the provisions of this section, be deemed to have been issued under that sub-section and accordingly the provisions of this section shall, so far as may be, apply to such application.

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78C. (1) Where the Central Government is satisfied that it is necessary or expedient in the public interest so to do, the Central Government may, by notification in the Official Gazette and notwithstanding anything contained in the foregoing provisions of this Act, direct the Controller with respect to—

(a) all applications for patents, whether made before or after the commencement of the Indian Patents and Designs

Special provisions in respect of applications for patents in the field of food, drug or medicine.

(Amendment) Act, 1968, in respect of inventions relating 44 of 1968.  
to—

(i) substances used or capable of being used as food or as medicine or drug, or

(ii) the methods or processes for the manufacture or production of any such substance as is referred to in sub-clause (i), or

(b) any class of applications referred to in clause (a), to abstain from doing, or delay the doing of anything which he would otherwise be required to do in relation to such applications and the Controller shall comply with such direction.

(2) The question whether a direction issued under sub-section (1) continues to be necessary or expedient in the public interest, shall be reconsidered by the Central Government within nine months from the date of issue of such direction and thereafter at intervals not exceeding twelve months, and if, on such reconsideration, it appears to the Central Government that it would no longer be necessary or expedient in the public interest to continue the direction, it shall revoke the direction.

(3) The result of every reconsideration under sub-section (2) shall be published in the Official Gazette.

(4) Any directions issued under rule 47 of the Defence of India Rules, 1962, in respect of such applications or classes of applications for patents as are referred to in sub-section (1), and in force immediately before the commencement of the Indian Patents and Designs (Amendment) Act, 1968, shall, in so far as such directions are not inconsistent with the provisions of this section, be deemed to have been issued under that sub-section and accordingly the provisions of this section shall, so far as may be, apply to such applications. 44 of 1968.

*Explanation.*—For the purposes of this section,—

(a) “food” means any substance intended for the use of babies, invalids or convalescents, as an article of food or drink;

(b) “medicine or drug” includes—

(i) all medicines for internal or external use of human beings or animals,

(ii) all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of diseases in human beings or animals.

(iii) all substances intended to be used for or in the maintenance of public health, or the prevention or control of any epidemic disease among human beings or animals,

(iv) all chemical substances which are ordinarily used as intermediates in the preparation or manufacture of any of the medicines or substances referred to above, but does not include insecticide, germicide, fungicide or any other substance intended to be used for the protection or preservation of plants.

78D. (1) So long as any directions issued or deemed to have been issued under section 78B or section 78C are in force in respect of an application,—

Consequences of directions under section 78B or section 78C

(a) the Controller shall not pass an order refusing to accept such application; and

(b) notwithstanding anything contained in this Act, no appeal shall lie against any such direction or from any order of the Controller passed in respect thereof:

Provided that the application may, subject to the directions, proceed to the stage of the acceptance of the complete specification, but the acceptance shall not be advertised nor the specification published, and no patent shall be granted in pursuance of the application.

(2) The Controller may, having regard to the directions issued or deemed to have been issued under section 78B or section 78C in respect of any application for a patent or, as the case may be, any class of applications for patents referred to therein and subject to such conditions, if any, as he thinks fit, extend the period (including any period specified in this Act) as the period on the expiry of which an application for a patent shall be deemed to have been refused, or a patent applied for shall not be sealed, or the specification accompanying an application and the drawing supplied therewith shall be open to public inspection, within which anything is required to be done by or under this Act in connection with such application or applications, whether or not such period has previously expired.

78E. (1) If in respect of an application for a patent any person fails to comply with any direction issued or deemed to have been issued under sub-section (1) of section 78B,—

Contravention of directions under section 78B,

(a) the application for the patent shall be deemed to have been abandoned;

**REPEALED**

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(b) such person shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(2) If the person committing an offence under sub-section (1) is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(3) Notwithstanding anything contained in sub-section (2), where an offence under sub-section (1) has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.’.

Repeal  
and  
saving.

3. (1) The Indian Patents and Designs (Amendment) Ordinance, 1968, is hereby repealed. 8 of 1968.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act.