THE

PATENTS, DESIGNS & TRADE MARKS

ACTS, 1883 to 1888,

CONSOLIDATED

WITH AN INDEX

BY

LEWIS EDMUNDS, D.Sc.; LL.B.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW; FELLOW OF THE CHEMICAL AND GEOLOGICAL SOCIETIES;

ASSOCIATE OF THE INSTITUTE OF PATENT AGENTS.

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PREFACE.

THE object of this consolidation of the Patents, Designs, and Trade Marks Acts, 1883 to 1888, is to present the whole of the four Acts at present in force in a continuous form, so that the alterations in the law can be at once seen without the trouble of referring to the three amending Acts, whenever a section of the principal Act of 1883 is consulted.

The actual text of the amending Acts of 1885, 1886, and 1888 has been added in the appropriate places, so that the principal Act has written into it all the amendments now in force. At the same time the original text of the Act of 1883 is wholly retained, the repealed portions being printed in italics, and the additions and alterations added in large type. In several places an alteration in the text would have incorporated the amendments more elegantly, and in the case of an actual Consolidation Act, passed through Parliament, such alterations might with advantage be made, as, when the sanction of the legislature is thus obtained, the Acts out of which the Consolidation Act is constructed can be ignored. In the absence of such authority, it is dangerous to depart from the original text, but it is hoped that the consolidation in the form here adopted will be found useful to those who have occasion to refer to these Acts.

L. E.

1, GARDEN COURT, TEMPLE,
February, 1889.

THE PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1888, CONSOLIDATED.

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Register of Patent Agents.

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THE PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1888, CONSOLIDATED,

BEING,

46 & 47 VICT. c. 57.—An Act to amend and consolidate the Law relating to Patents for Inventions, Registration of Designs, and of Trade Marks. [25th August, 1883.]

48 & 49 Vict. c. 63.—An Act to amend the Patents, Designs, and Trade Marks Act, 1883. [14th August, 1885.]

49 & 50 Vict. c. 37.—An Act to remove certain doubts respecting the construction of the Patents, Designs, and Trade Marks Act, 1883, so far as respects the drawings by which specifications are required to be accompanied, and as respects exhibitions. [25th June, 1886.]

51 & 52 Vict. c. 50.—An Act to amend the Patents, Designs, and Trade Marks Act, 1883. [24th December, 1888.]

NOTE.—The general text of the Act of 1883 is adhered to. The repealed parts are printed in italics, and the additions in heavier type. The amending Act and section are quoted in the margin.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

PRELIMINARY.

1. This Act may be cited as the Patents, Designs, and Trade Marks Act, 1883. Short title.

NOTE.—By Act 1888, s. 29, the principal Act of 1883, and the Amending Acts of 1885, 1886, and 1888, may be cited collectively as the Patents, Designs, and Trade Marks Acts, 1883 to 1888.

2. This Act is divided into parts, as follows:— Division of Act into parts.

Part I.—PRELIMINARY,
II.—PATENTS.
III.—DESIGNS.
IV.—TRADE MARKS.
V.—GENERAL.

Commencement of Act.

3. This Act, except where it is otherwise expressed, shall commence from and immediately after the thirty-first day of December one thousand eight hundred and eighty-three.

Act, 1888, s. 28.

The Act of 1888 shall, except so far as is thereby otherwise specially provided, commence and come into operation on the first day of January one thousand eight hundred and eighty-nine.

NOTE.—There is no special provision as to time of commencement of the Acts of 1885 and 1886, so that they commence from the dates of those Acts, the 14th August, 1885, and the 25th June, 1886.

PART II.

PATENTS.

Application for and Grant of Patent.

Persons entitled to apply for patent.

4. (1.) Any person, whether a British subject or not, may make an application for a patent.

(2.) Two or more persons may make a joint application for a patent, and a patent may be granted to them jointly.

Act, 1885, s. 5. Power to grant patents to several persons jointly.

Whereas doubts have arisen whether under the principal Act a patent may lawfully be granted to several persons jointly, some or one of whom only are or is the true and first inventors or inventor; be it therefore enacted and declared that it has been and is lawful under the principal Act to grant such a patent.

Application and specification.

5. (1.) An application for a patent must be made in the form set forth in the First Schedule to this Act, or in such other form as may be from time to time prescribed; and must be left at, or sent by post to, the Patent Office in the prescribed manner.

(2.) An application must contain a declaration to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application, one or more of the applicants, claims or claim to be the true and first inventor or inventors, and for which he or they desires or desire to obtain a patent; and must be accompanied by either a provisional or complete specification.

Act, 1885, s. 2. 5 & 6 Will. 4, c. 62.

The declaration may be either a statutory declaration under the Statutory Declarations Act, 1835, or not, as may be from time to time prescribed.

(3.) A provisional specification must describe the nature of the invention, and be accompanied by drawings, if required.

(4.) A complete specification, whether left on application or subsequently, must particularly describe and ascertain the nature of the invention, and in what manner it is to be performed, and must be accompanied by drawings, if required.

The requirement of this sub-section as to drawings shall not be deemed to be insufficiently complied with by reason only that instead of being accompanied by drawings the complete specification refers to the drawings which accompanied the provisional specification. And no patent heretofore sealed shall be invalid by reason only that the complete specification was not accompanied by drawings, but referred to those which accompanied the provisional specification.

The same drawings may accompany both specifications. Act, 1888, s. 2.

(5.) A specification, whether provisional or complete, must commence with the title, and in the case of a complete specification must end with a distinct statement of the invention claimed.

6. The comptroller shall refer every application to an examiner, who shall ascertain and report to the comptroller whether the nature of the invention has been fairly described, and the application, specification, and drawings (if any) have been prepared in the prescribed manner, and the title sufficiently indicates the subject-matter of the invention.

Reference of application to examiner.

[**7.** (1.) *If the examiner reports that the nature of the invention is not fairly described, or that the application, specification, or drawings has not or have not been prepared in the prescribed manner, or that the title does not sufficiently indicate the subject-matter of the invention, the comptroller may require that the application, specification, or drawings be amended before he proceeds with the application.*

Power for comptroller to refuse application or require amendment.

Repealed. Act, 1888, s. 2.

(2.) *Where the comptroller requires an amendment, the applicant may appeal from his decision to the law officer.*

(3.) *The law officer shall, if required, hear the applicant and the comptroller, and may make an order determining whether and subject to what conditions, if any, the application shall be accepted.*

(4.) *The comptroller shall, when an application has been accepted, give notice thereof to the applicant.*

(5.) *If after an application has been made, but before a patent has been sealed, an application is made, accompanied by a specification bearing the same or a similar title, it shall be the duty of the examiner to report to the comptroller whether the specification appears to him to comprise the same invention; and, if he reports in the affirmative, the comptroller shall give notice to the applicants that he has so reported.*

(6.) *Where the examiner reports in the affirmative, the comptroller may determine, subject to an appeal to the law officer, whether the invention comprised in both applications is the same, and if so he may refuse to seal a patent on the application of the second applicant.*]

Act, 1888, s. 2.
Power of comptroller to refuse application or require amendment.

"7. (1.) If the examiner reports that the nature of the invention is not fairly described, or that the application, specification, or drawings has not, or have not, been prepared in the prescribed manner, or that the title does not sufficiently indicate the subject matter of the invention, the comptroller may refuse to accept the application, or require that the application, specification, or drawings be amended before he proceeds with the application; and in the latter case the application shall, if the comptroller so directs, bear date as from the time when the requirement is complied with.

"(2.) Where the comptroller refuses to accept an application or requires an amendment, the applicant may appeal from his decision to the law officer.

"(3.) The law officer shall, if required, hear the applicant and the comptroller, and may make an order determining whether, and subject to what conditions (if any), the application shall be accepted.

"(4.) The comptroller shall, when an application has been accepted, give notice thereof to the applicant.

"(5.) If, after an application for a patent has been made, but before the patent thereon has been sealed, another application for a patent is made, accompanied by a specification bearing the same or a similar title, the comptroller, if he thinks fit, on the request of the second applicant, or of his legal representative, may, within two months of the grant of a patent on the first application, either decline to proceed with the second application or allow the surrender of the patent, if any, granted thereon."

Time for leaving complete specification.

8. (1.) If the applicant does not leave a complete specification with his application, he may leave it at any subsequent time within nine months from the date of application.

Act, 1885, s. 3.

A complete specification may be left within such extended time, not exceeding one month after the said nine months, as the comptroller may on payment of the prescribed fee allow.

(2.) Unless a complete specification is left within that time the application shall be deemed to be abandoned.

Comparison of provisional and complete specification.

9. (1.) Where a complete specification is left after a provisional specification, the comptroller shall refer both specifications to an examiner for the purpose of ascertaining whether the complete specification has been prepared in the prescribed manner, and whether the invention particularly described in the complete specification is substantially the same as that which is described in the provisional specification.

(2.) If the examiner reports that the conditions hereinbefore contained have not been complied with, the comptroller may refuse to accept the complete specification unless and until the same shall have been amended to his satisfaction; but any such refusal shall be subject to appeal to the law officer.

(3.) The law officer shall, if required, hear the applicant and the comptroller, and may make an order determining whether and subject to what conditions, if any, the complete specification shall be accepted.

(4.) Unless a complete specification is accepted within twelve months from the date of application, then (save in the case of an appeal having been lodged against the refusal to accept) the application shall, at the expiration of those twelve months, become void.

A complete specification may be accepted within such extended time, not exceeding three months after the said twelve months, as the comptroller may on payment of the prescribed fee allow. Act, 1885, s. 3.

(5.) Reports of examiners shall not in any case be published or be open to public inspection, and shall not be liable to production or inspection in any legal proceeding [*other than an appeal to the law officer under this Act*], unless the Court or officer having power to order discovery in such legal proceeding shall certify that such production or inspection is desirable in the interests of justice, and ought to be allowed. Repealed. Act, 1888, s. 3.

10. On the acceptance of the complete specification the comptroller shall advertise the acceptance; and the application and specification or specifications with the drawings (if any) shall be open to public inspection. Advertisement on acceptance of complete specification.

11. (1.) Any person may at any time within two months from the date of the advertisement of the acceptance of a complete specification give notice at the Patent Office of opposition to the grant of the patent on the ground of the applicant having obtained the invention from him, or from a person of whom he is the legal representative, or on the ground that the invention has been patented in this country on an application of prior date [*or on the ground of an examiner having reported to the comptroller that the specification appears to him to comprise the same invention as is comprised in a specification* Repealed. Act, 1888, s. 4.

Opposition to grant of patent.

bearing the same or a similar title, and accompanying a previous application], **or on the ground that the complete specification describes or claims an invention other than that described in the provisional specification, and that such other invention forms the subject of an application made by the opponent in the interval between the leaving of the provisional specification and the leaving of the complete specification,** but on no other ground.

Act, 1888, s. 4.

(2.) Where such notice is given the comptroller shall give notice of the opposition to the applicant, and shall, on the expiration of those two months, after hearing the applicant and the person so giving notice, if desirous of being heard, decide on the case, but subject to appeal to the law officer.

(3.) The law officer shall, if required, hear the applicant and any person so giving notice and being, in the opinion of the law officer, entitled to be heard in opposition to the grant, and shall determine whether the grant ought or ought not to be made.

(4.) The law officer may, if he thinks fit, obtain the assistance of an expert, who shall be paid such remuneration as the law officer, with the consent of the Treasury, shall appoint.

Sealing of patent.

12. (1.) If there is no opposition, or, in case of opposition, if the determination is in favour of the grant of a patent, the comptroller shall cause a patent to be sealed with the seal of the Patent Office.

(2.) A patent so sealed shall have the same effect as if it were sealed with the great seal of the United Kingdom.

(3.) A patent shall be sealed as soon as may be, and not after the expiration of fifteen months from the date of application, except in the cases hereinafter mentioned, that is to say—

(*a*) Where the sealing is delayed by an appeal to the law officer, or by opposition to the grant of the patent, the patent may be sealed at such time as the law officer may direct.

(*b*) If the person making the application dies before the expiration of the fifteen months aforesaid, the patent may be granted to his legal representative and sealed at any time within twelve months after the death of the applicant.

A complete specification may be left and accepted within such extended times, not exceeding one month and three months respectively after the said nine and twelve months respectively as the comptroller may on payment of the prescribed fee allow, and where such extension of time has been allowed, a further extension of four months after the said fifteen months shall be allowed for the sealing of the patent; and the principal Act shall have effect as if any time so allowed were added to the said periods specified in the principal Act.

Act, 1885, s. 3.

13. Every patent shall be dated and sealed as of the day of the application: Provided that no proceedings shall be taken in respect of an infringement committed before the publication of the complete specification: Provided also, that in case of more than one application for a patent for the same invention, the sealing of a patent on one of those applications shall not prevent the sealing of a patent on an earlier application.

Date of patent.

Where an application for a patent has been abandoned, or become void, the specification or specifications and drawings (if any) accompanying or left in connexion with such application, shall not at any time be open to public inspection or be published by the comptroller.

Specifications, &c., not to be published unless application accepted.

Act, 1885, s. 4.

Provisional Protection.

14. Where an application for a patent in respect of an invention has been accepted, the invention may during the period between the date of the application and the date of sealing such patent be used and published without prejudice to the patent to be granted for the same; and such protection from the consequences of use and publication is in this Act referred to as provisional protection.

Provisional protection.

Protection by Complete Specification.

15. After the acceptance of a complete specification and until the date of sealing a patent in respect thereof, or the expiration of the time for sealing, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the acceptance of the complete specification: Provided that an applicant shall not be entitled to institute any proceeding for infringement unless and until a patent for the invention has been granted to him.

Effect of acceptance of complete specification.

Patent.

Extent of patent.

16. Every patent when sealed shall have effect throughout the United Kingdom and the Isle of Man.

Term of patent.

17. (1.) The term limited in every patent for the duration thereof shall be fourteen years from its date.

(2.) But every patent shall, notwithstanding anything therein or in this Act, cease if the patentee fails to make the prescribed payments within the prescribed times.

(3.) If, nevertheless, in any case, by accident mistake or inadvertence, a patentee fails to make any prescribed payment within the prescribed time, he may apply to the comptroller for an enlargement of the time for making that payment.

(4.) Thereupon the comptroller shall, if satisfied that the failure has arisen from any of the above-mentioned causes, on receipt of the prescribed fee for enlargement, not exceeding ten pounds, enlarge the time accordingly, subject to the following conditions:

(*a*) The time for making any payment shall not in any case be enlarged for more than three months.

(*b*) If any proceeding shall be taken in respect of an infringement of the patent committed after a failure to make any payment within the prescribed time, and before the enlargement thereof, the Court before which the proceeding is proposed to be taken may, if it shall think fit, refuse to award or give any damages in respect of such infringement.

Amendment of Specification.

Amendment of specification.

18. (1.) An applicant or a patentee may, from time to time, by request in writing left at the Patent Office, seek leave to amend his specification, including drawings forming part thereof, by way of disclaimer, correction, or explanation, stating the nature of such amendment and his reasons for the same.

(2.) The request and the nature of such proposed amendment shall be advertised in the prescribed manner, and at any time within one month from its first advertisement any person may give notice at the Patent Office of opposition to the amendment.

(3.) Where such notice is given the comptroller shall give notice of the opposition to the person making the request, and

shall hear and decide the case subject to an appeal to the law officer.

(4.) The law officer shall, if required, hear the person making the request and the person so giving notice, and being in the opinion of the law officer entitled to be heard in opposition to the request, and shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(5.) Where no notice of opposition is given, or the person so giving notice does not appear, the comptroller shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(6.) When leave to amend is refused by the comptroller, the person making the request may appeal from his decision to the law officer.

(7.) The law officer shall, if required, hear the person making the request and the comptroller, and may make an order determining whether, and subject to what conditions, if any, the amendment ought to be allowed.

(8.) No amendment shall be allowed that would make the specification, as amended, claim an invention substantially larger than or substantially different from the invention claimed by the specification as it stood before amendment.

(9.) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall in all courts and for all purposes be deemed to form part of the specification.

(10.) [*The foregoing provisions of this section do not apply when and so long as any action for infringement or other legal proceeding in relation to a patent is pending.*] Repealed. Act, 1888, s. 5.

(10.) The foregoing provisions of this section do not apply when, and so long as any action for infringement or proceeding for revocation of a patent is pending. Act, 1888, s. 5.

19. In an action for infringement of a patent, and in a proceeding for revocation of a patent, the Court or a judge may at any time order that the patentee shall, subject to such terms as to costs and otherwise as the Court or a judge may impose, be at liberty to apply at the Patent Office for leave to amend his specification by way of disclaimer, and may direct that in the meantime the trial or hearing of the action shall be postponed. Power to disclaim part of invention during action, &c.

Restriction on recovery of damages.

20. Where an amendment by way of disclaimer, correction, or explanation, has been allowed under this Act, no damages shall be given in any action in respect of the use of the invention before the disclaimer, correction, or explanation, unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge.

Advertisement of amendment.

21. Every amendment of a specification shall be advertised in the prescribed manner.

Compulsory Licenses.

Power for Board to order grant of licenses.

22. If on the petition of any person interested it is proved to the Board of Trade that by reason of the default of a patentee to grant licenses on reasonable terms—

(*a*) The patent is not being worked in the United Kingdom; 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 Board may order the patentee to grant licenses on such terms as to the amount of royalties, security for payment or otherwise, as the Board, having regard to the nature of the invention and the circumstances of the case, may deem just, and any such order may be enforced by mandamus.

Register of Patents.

Register of patents.

23. (1.) There shall be kept at the Patent Office a book called the Register of Patents, wherein shall be entered the names and addresses of grantees of patents, notifications of assignments and of transmissions of patents, of licenses under patents, and of amendments, extensions, and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may from time to time be prescribed.

(2.) The register of patents shall be primâ facie evidence of any matters by this Act directed or authorized to be inserted therein.

(3.) Copies of deeds, licenses, and any other documents affecting the proprietorship in any letters patent or in any license thereunder, must be supplied to the comptroller in the prescribed manner for filing in the Patent Office.

Fees.

Fees in schedule.

24. (1.) There shall be paid in respect of the several instruments described in the Second Schedule to this Act, the fees in that schedule mentioned, and there shall likewise be paid, in respect of other matters under this part of the Act, such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of her Majesty's Exchequer in such manner as the Treasury may from time to time direct.

(2.) The Board of Trade may from time to time, if they think fit, with the consent of the Treasury, reduce any of those fees.

Extension of Term of Patent.

Extension of term of patent on petition to Queen in Council.

25. (1.) A patentee may, after advertising in manner directed by any rules made under this section his intention to do so, present a petition to her Majesty in Council, praying that his patent may be extended for a further term; but such petition must be presented at least six months before the time limited for the expiration of the patent.

(2.) Any person may enter a caveat, addressed to the registrar of the council at the council office, against the extension.

(3.) If her Majesty shall be pleased to refer any such petition to the Judicial Committee of the Privy Council, the said Committee shall proceed to consider the same, and the petitioner and any person who has entered a caveat shall be entitled to be heard by himself or by counsel on the petition.

(4.) The Judicial Committee shall, in considering their decision, have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case.

(5.) If the Judicial Committee report that the patentee has been inadequately remunerated by his patent, it shall be lawful for her Majesty in Council to extend the term of the patent for a further term not exceeding seven, or in exceptional cases fourteen, years; or to order the grant of a new patent for the term therein mentioned, and containing any restrictions, conditions, and provisions that the Judicial Committee may think fit.

(6.) It shall be lawful for her Majesty in Council to make, from

time to time, rules of procedure and practice for regulating proceedings on such petitions, and subject thereto such proceedings shall be regulated according to the existing procedure and practice in patent matters of the Judicial Committee.

(7.) The costs of all parties of and incident to such proceedings shall be in the discretion of the Judicial Committee; and the orders of the Committee respecting costs shall be enforceable as if they were orders of a division of the High Court of Justice.

Revocation.

Revocation of patent.

26. (1.) The proceeding by scire facias to repeal a patent is hereby abolished.

(2.) Revocation of a patent may be obtained on petition to the Court.

(3.) Every ground on which a patent might, at the commencement of this Act, be repealed by scire facias shall be available by way of defence to an action of infringement and shall also be a ground of revocation.

(4.) A petition for revocation of a patent may be presented by—

(*a*) The Attorney-General in England or Ireland, or the Lord Advocate in Scotland:

(*b*) Any person authorised by the Attorney-General in England or Ireland, or the Lord Advocate in Scotland:

(*c*) Any person alleging that the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims:

(*d*) Any person alleging that he, or any person under or through whom he claims, was the true inventor of any invention included in the claim of the patentee:

(*e*) Any person alleging that he, or any person under or through whom he claims an interest in any trade, business, or manufacture, had publicly manufactured, used, or sold, within this realm, before the date of the patent, anything claimed by the patentee as his invention.

(5.) The plaintiff must deliver with his petition particulars of the objections on which he means to rely, and no evidence shall, except by leave of the Court or a judge, be admitted in proof of any objection of which particulars are not so delivered.

(6.) Particulars delivered may be from time to time amended by leave of the Court or a judge.

(7.) The defendant shall be entitled to begin, and give evidence in support of the patent, and if the plaintiff gives evidence impeaching the validity of the patent the defendant shall be entitled to reply.

(8.) Where a patent has been revoked on the ground of fraud, the comptroller may, on the application of the true inventor made in accordance with the provisions of this Act, grant to him a patent in lieu of and bearing the same date as the date of revocation of the patent so revoked, but the patent so granted shall cease on the expiration of the term for which the revoked patent was granted.

Crown.

Patent to bind Crown.

27. (1.) A patent shall have to all intents the like effect as against her Majesty the Queen, her heirs and successors, as it has against a subject.

(2.) But the officers or authorities administering any department of the service of the Crown may, by themselves, their agents, contractors, or others, at any time after the application, use the invention for the services of the Crown on terms to be before or after the use thereof agreed on, with the approval of the Treasury, between those officers or authorities and the patentee, or, in default of such agreement, on such terms as may be settled by the Treasury after hearing all parties interested.

Legal Proceedings.

Hearing with assessor.

28. (1.) In an action or proceeding for infringement or revocation of a patent, the Court may, if it thinks fit, and shall, on the request of either of the parties to the proceeding, call in the aid of an assessor specially qualified, and try and hear the case wholly or partially with his assistance; the action shall be tried without a jury unless the Court shall otherwise direct.

(2.) The Court of Appeal or the Judicial Committee of the Privy Council may, if they see fit, in any proceeding before them respectively, call in the aid of an assessor as aforesaid.

(3.) The remuneration, if any, to be paid to an assessor under this section shall be determined by the Court or the Court of Appeal

or Judicial Committee, as the case may be, and be paid in the same manner as the other expenses of the execution of this Act.

Delivery of particulars.

29. (1.) In an action for infringement of a patent the plaintiff must deliver with his statement of claim, or by order of the Court or the judge, at any subsequent time, particulars of the breaches complained of.

(2.) The defendant must deliver with his statement of defence, or, by order of the Court or a judge, at any subsequent time, particulars of any objections on which he relies in support thereof.

(3.) If the defendant disputes the validity of the patent, the particulars delivered by him must state on what grounds he disputes it, and if one of those grounds is want of novelty, must state the time and place of the previous publication or user alleged by him.

(4.) At the hearing no evidence shall, except by leave of the Court or a judge, be admitted in proof of any alleged infringement or objection of which particulars are not so delivered.

(5.) Particulars delivered may be from time to time amended, by leave of the Court or a judge.

(6.) On taxation of costs regard shall be had to the particulars delivered by the plaintiff and by the defendant; and they respectively shall not be allowed any costs in respect of any particular delivered by them unless the same is certified by the Court or a judge to have been proven or to have been reasonable and proper, without regard to the general costs of the case.

Order for inspection, &c., in action.

30. In an action for infringement of a patent, the Court or a judge may on the application of either party make such order for an injunction, inspection or account, and impose such terms and give such directions respecting the same and the proceedings thereon as the Court or a judge may see fit.

Certificate of validity questioned and costs thereon.

31. In an action for infringement of a patent, the Court or a judge may certify that the validity of the patent came in question; and if the Court or a judge so certifies, then in any subsequent action for infringement, the plaintiff in that action on obtaining a final order or judgment in his favour shall have his full costs, charges and expenses, as between solicitor and client, unless the Court or judge trying the action certifies that he ought not to have the same.

Remedy in case of groundless threats of legal proceedings.

32. Where any person claiming to be the patentee of an invention, by circulars, advertisements or otherwise threatens any other person with any legal proceedings or liability in respect of any alleged manufacture, use, sale or purchase of the invention, any person or persons aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as may have been sustained thereby, if the alleged manufacture, use, sale, or purchase to which the threats related was not in fact an infringement of any legal rights of the person making such threats: Provided that this section shall not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his patent.

Miscellaneous.

Patent for one invention only.

33. Every patent may be in the form in the First Schedule to this Act, and shall be granted for one invention only, but may contain more than one claim; but it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it comprises more than one invention.

Patent on application of representative of deceased inventor.

34. (1.) If a person possessed of an invention dies without making application for a patent for the invention, application may be made by, and a patent for the invention granted to, his legal representative.

(2.) Every such application must be made within six months of the decease of such person, and must contain a declaration by the legal representative that he believes such person to be the true and first inventor of the invention.

Patent to first inventor not invalidated by application in fraud of him.

35. A patent granted to the true and first inventor shall not be invalidated by an application in fraud of him, or by provisional protection obtained thereon, or by any use or publication of the invention subsequent to that fraudulent application during the period of provisional protection.

Assignment for particular places.

36. A patentee may assign his patent for any place in or part of the United Kingdom, or Isle of Man, as effectually as if the patent were originally granted to extend to that place or part only.

Loss or destruction of patent.

37. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the comptroller, the comptroller may at any time cause a duplicate thereof to be sealed.

Proceedings and costs before law officer.

38. The law officers may examine witnesses on oath and administer oaths for that purpose under this part of this Act, and may from time to time make, alter, and rescind rules regulating references and appeals to the law officers and the practice and procedure before them under this part of this Act; and in any proceeding before either of the law officers under this part of this Act, the law officer may order costs to be paid by either party, and any such order may be made a rule of the Court.

Exhibition at industrial or international exhibition not to prejudice patent rights.

39. The exhibition of an invention at an industrial or international exhibition, certified as such by the Board of Trade, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition in the place where the exhibition is held, or the use of the invention during the period of the holding of the exhibition by any person elsewhere, without the privity or consent of the inventor, shall not prejudice the right of the inventor or his legal personal representative to apply for and obtain provisional protection and a patent in respect of the invention or the validity of any patent granted on the application, provided that both the following conditions are complied with, namely,—

(*a*) The exhibitor must, before exhibiting the invention, give the comptroller the prescribed notice of his intention to do so; and

(*b*) The application for a patent must be made before or within six months from the date of the opening of the exhibition.

Protection of patents and designs exhibited at international exhibitions. Act, 1886, s. 3.

Whereas it is expedient to provide for the extension of this section to industrial and international exhibitions held out of the United Kingdom, be it therefore enacted as follows:

It shall be lawful for Her Majesty, by Order in Council, from time to time to declare that sections thirty-nine and fifty-seven of the Patents, Designs, and Trade Marks Act, 1883, or either of those sections, shall apply to any exhibition mentioned in the Order in like manner as if it were an industrial or international exhibition certified by the Board of Trade, and to provide that the exhibitor shall be relieved from the conditions, specified in

the said sections, of giving notice to the comptroller of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as to Her Majesty in Council may seem fit.

Publication of illustrated journal, indexes, &c.

40. (1.) The comptroller shall cause to be issued periodically an illustrated journal of patented inventions, as well as reports of patent cases decided by courts of law, and any other information that the comptroller may deem generally useful or important.

(2.) Provision shall be made by the comptroller for keeping on sale copies of such journal, and also of all complete specifications of patents for the time being in force, with their accompanying drawings, if any.

(3.) The comptroller shall continue, in such form as he may deem expedient, the indexes and abridgments of specifications hitherto published, and shall from time to time prepare and publish such other indexes, abridgments of specifications, catalogues, and other works relating to inventions, as he may see fit.

Patent Museum.

41. The control and management of the existing Patent Museum, and its contents shall from and after the commencement of this Act, be transferred to and vested in the Department of Science and Art, subject to such directions as her Majesty in Council may see fit to give.

Power to require models on payment.

42. The Department of Science and Art may at any time require a patentee to furnish them with a model of his invention on payment to the patentee of the cost of the manufacture of the model; the amount to be settled, in case of dispute, by the Board of Trade.

Foreign vessels in British waters.

43. (1.) A patent shall not prevent the use of an invention for the purposes of the navigation of a foreign vessel within the jurisdiction of any of her Majesty's Courts in the United Kingdom, or Isle of Man, or the use of an invention in a foreign vessel within that jurisdiction, provided it is not used therein for or in connection with the manufacture or preparation of anything intended to be sold in or exported from the United Kingdom or Isle of Man.

(2.) But this section shall not extend to vessels of any foreign state of which the laws authorise subjects of such foreign state, having patents or like privileges for the exclusive use or exercise of inventions within its territories, to prevent or interfere with the

use of such inventions in British vessels while in the ports of such foreign state, or in the waters within the jurisdiction of its courts, where such inventions are not so used for the manufacture or preparation of anything intended to be sold in or exported from the territories of such foreign state.

Assignment to Secretary for War of certain inventions.

44. (1.) The inventor of any improvement in instruments or munitions of war, his executors, administrators, or assigns (who are in this section comprised in the expression the inventor) may (either for or without valuable consideration) assign to her Majesty's Principal Secretary of State for the War Department (hereinafter referred to as the Secretary of State), on behalf of her Majesty, all the benefit of the invention and of any patent obtained or to be obtained for the same; and the Secretary of State may be a party to the assignment.

(2.) The assignment shall effectually vest the benefit of the invention and patent in the Secretary of State for the time being on behalf of her Majesty, and all covenants and agreements therein contained for keeping the invention secret and otherwise shall be valid and effectual (notwithstanding any want of valuable consideration), and may be enforced accordingly by the Secretary of State for the time being.

(3.) Where any such assignment has been made to the Secretary of State, he may at any time before the application for a patent for the invention, or before publication of the specification or specifications, certify to the comptroller his opinion that, in the interest of the public service, the particulars of the invention and of the manner in which it is to be performed should be kept secret.

(4.) If the Secretary of State so certifies, the application and specification or specifications with the drawings (if any), and any amendment of the specification or specifications, and any copies of such documents and drawings, shall, instead of being left in the ordinary manner at the patent office, be delivered to the comptroller in a packet sealed by authority of the Secretary of State.

(5.) Such packet shall until the expiration of the term or extended term during which a patent for the invention may be in force, be kept sealed by the comptroller, and shall not be opened save under the authority of an order of the Secretary of State, or of the law officers.

(6.) Such sealed packet shall be delivered at any time during the continuance of the patent to any person authorized by writing under the hand of the Secretary of State to receive the same, and shall if returned to the comptroller be again kept sealed by him.

(7.) On the expiration of the term or extended term of the patent, such sealed packet shall be delivered to any person authorized by writing under the hand of the Secretary of State to receive it.

(8.) Where the Secretary of State certifies as aforesaid, after an application for a patent has been left at the patent office, but before the publication of the specification or specifications, the application specification or specifications, with the drawings (if any), shall be forthwith placed in a packet sealed by authority of the comptroller, and such packet shall be subject to the foregoing provisions respecting a packet sealed by authority of the Secretary of State.

(9.) No proceeding by petition or otherwise shall lie for revocation of a patent granted for an invention in relation to which the Secretary of State has certified as aforesaid.

(10.) No copy of any specification or other document or drawing, by this section required to be placed in a sealed packet, shall in any manner whatever be published or open to the inspection of the public, but save as in this section otherwise directed, the provisions of this part of this Act shall apply in respect of any such invention and patent as aforesaid.

(11.) The Secretary of State may, at any time by writing under his hand, waive the benefit of this section with respect to any particular invention, and the specifications, documents and drawings shall be thenceforth kept and dealt with in the ordinary way.

(12.) The communication of any invention for any improvement in instruments or munitions of war to the Secretary of State, or to any person or persons authorized by him to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed use or publication of such invention so as to prejudice the grant or validity of any patent for the same.

Existing Patents.

45. (1.) The provisions of this Act relating to applications for patents and proceedings thereon shall have effect in respect only of applications made after the commencement of this Act. Provisions respecting existing patents.

(2.) Every patent granted before the commencement of this Act, or on an application then pending, shall remain unaffected by the provisions of this Act relating to patents binding the Crown, and to compulsory licenses.

(3.) In all other respects (including the amount and time of payment of fees) this Act shall extend to all patents granted before the commencement of this Act, or on applications then pending, in substitution for such enactments as would have applied thereto if this Act had not been passed.

(4.) All instruments relating to patents granted before the commencement of this Act required to be left or filed in the Great Seal Patent Office shall be deemed to be so left or filed if left or filed before or after the commencement of this Act in the patent office.

Definitions.

Definitions of patent, patentee, and invention.

46. In and for the purposes of this Act—

"Patent" means letters patent for an invention:

"Patentee" means the person for the time being entitled to the benefit of a patent:

"Invention" means any manner of new manufacture the subject of letters patent and grant of privilege within section six of the Statute of Monopolies (that is, the Act of the twenty-first year of the reign of King James the First, chapter three, intituled "An Act concerning monopolies and dispensations with penal laws and the forfeiture thereof"), and includes an alleged invention.

In Scotland "injunction" means "interdict."

PART III.

Designs.

Registration of Designs.

Application for registration of designs.

47. (1.) The comptroller may, on application by or on behalf of any person claiming to be the proprietor of any new or original design not previously published in the United Kingdom, register the design under this part of this Act.

(2.) The application must be made in the form set forth in the First Schedule to this Act, or in such other form as may be from time to time prescribed, and must be left at, or sent by post to, the patent office in the prescribed manner.

(3.) The application must contain a statement of the nature of the design, and the class or classes of goods in which the applicant desires that the design be registered.

(4.) The same design may be registered in more than one class.

(5.) In case of doubt as to the class in which a design ought to be registered, the comptroller may decide the question.

(6.) The comptroller may, if he thinks fit, refuse to register any design presented to him for registration, but any person aggrieved by any such refusal may appeal therefrom to the Board of Trade.

(7.) The Board of Trade shall, if required, hear the applicant and the comptroller, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

Drawings, &c., to be furnished on application.

48. (1.) On application for registration of a design the applicant shall furnish to the comptroller the prescribed number of copies of drawings, photographs, or tracings of the design sufficient, in the opinion of the comptroller, for enabling him to identify the design; or the applicant may, instead of such copies, furnish exact representations or specimens of the design.

(2.) The comptroller may, if he thinks fit, refuse any drawing, photograph, tracing, representation, or specimen which is not, in his opinion, suitable for the official records.

Certificate of registration.

49. (1.) The comptroller shall grant a certificate of registration to the proprietor of the design when registered.

(2.) The comptroller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, grant a copy or copies of the certificate.

Copyright in Registered Designs.

Copyright on registration.

50. (1.) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during five years from the date of registration.

(2.) Before delivery on sale of any articles to which a registered design has been applied, the proprietor must (if exact representations or specimens were not furnished on the application for registration), furnish to the comptroller the prescribed number of exact representations or specimens of the design; and if he fails to do so, the

comptroller may erase his name from the register, and thereupon his copyright in the design shall cease.

Marking registered designs.

51. Before delivery on sale of any articles to which a registered design has been applied, the proprietor of the design shall cause each such article to be marked with the prescribed mark, or with the prescribed word or words or figures, denoting that the design is registered; and if he fails to do so, the copyright in the design shall cease, unless the proprietor shows that he took all proper steps to ensure the marking of the article.

Inspection of registered designs.

52. (1.) During the existence of copyright in a design, the design shall not be open to inspection except by the proprietor, or a person authorized in writing by the proprietor, or a person authorized by the comptroller or by the Court, and furnishing such information as may enable the comptroller to identify the design, nor except in the presence of the comptroller, or of an officer acting under him, nor except on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof.

Act, 1888, s. 6.

Provided that where registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.

(2.) When the copyright in a design has ceased, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

Information as to existence of copyright.

53. On the request of any person producing a particular design, together with its mark of registration, or producing only its mark of registration, or furnishing such information as may enable the comptroller to identify the design, and on payment of the prescribed fee, it shall be the duty of the comptroller to inform such person whether the registration still exists in respect of such design, and if so, in respect of what class or classes of goods, and stating also the date of registration, and the name and address of the registered proprietor.

Cesser of copyright in certain events.

54. If a registered design is used in manufacture in any foreign country and is not used in this country within six months of its registration in this country, the copyright in the design shall cease.

Register of Designs.

55. (1.) There shall be kept at the Patent Office a book called the Register of Designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may from time to time be prescribed. Register of designs.

(2.) The register of designs shall be primâ facie evidence of any matters by this Act directed or authorized to be entered therein.

Fees.

56. There shall be paid in respect of applications and registration and other matters under this part of this Act such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of her Majesty's Exchequer in such manner as the Treasury shall from time to time direct. Fees on registration, &c.

Industrial and International Exhibitions.

57. The exhibition at an industrial or international exhibition certified as such by the Board of Trade, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design, shall not prevent the design from being registered, or invalidate the registration thereof, provided that both the following conditions are complied with; namely,— Exhibition at industrial or international exhibition not to prevent or invalidate registration.

(*a*) The exhibitor must, before exhibiting the design or article, or publishing a description of the design, give the comptroller the prescribed notice of his intention to do so; and

(*b*) The application for registration must be made before or within six months from the date of the opening of the exhibition.

And whereas it is expedient to provide for the extension of this section to industrial and international exhibitions held out of the United Kingdom, be it therefore enacted as follows: Protection of patents and designs exhibited at international exhibitions.

It shall be lawful for Her Majesty, by Order in Council, from

Act, 1886, s. 3.

time to time to declare that sections thirty-nine and fifty-seven of the Patents, Designs, and Trade Marks Act, 1883, or either of those sections, shall apply to any exhibition mentioned in the Order in like manner as if it were an industrial or international exhibition certified by the Board of Trade, and to provide that the exhibitor shall be relieved from the conditions, specified in the said sections, of giving notice to the comptroller of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as to Her Majesty in Council may seem fit.

Legal Proceedings.

Penalty on piracy of registered design.

Act, 1888, s. 7.

58. During the existence of copyright in any design—

(*a*) It shall not be lawful for any person without the license or written consent of the registered proprietor to apply **or cause to be applied** such design or any fraudulent or obvious imitation thereof, in the class or classes of goods in which such design is registered, for purposes of sale to any article of manufacture or to any substance artificial or natural or partly artificial and partly natural; and

(*b*) It shall not be lawful for any person to publish or expose for sale any article of manufacture or any substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, knowing that the same has been so applied without the consent of the registered proprietor.

Any person who acts in contravention of this section shall be liable for every offence to forfeit a sum not exceeding fifty pounds to the registered proprietor of the design, who may recover such sum as a simple contract debt by action in any court of competent jurisdiction: **Provided that the total sum forfeited in respect of any one design shall not exceed one hundred pounds.**

Act, 1888, s. 7.

Action for damages.

59. Notwithstanding the remedy given by this Act for the recovery of such penalty as aforesaid, the registered proprietor of any design may (if he elects to do so) bring an action for the recovery of any damages arising from the application of any such design, or of any fraudulent or obvious imitation thereof for the purpose of sale, to any article of manufacture or substance, or from the publication, sale or exposure for sale by any person of any article or substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, such person

knowing that the proprietor had not given his consent to such application.

Definitions.

60. In and for the purposes of this Act— Definition of "design," "copyright."

"Design" means any design applicable to any article of manufacture, or to any substance artificial or natural, or partly artificial and partly natural, whether the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined, not being a design for a sculpture, or other thing within the protection of the Sculpture Copyright Act of the year 1814 (fifty-fourth George the Third, chapter fifty-six).

"Copyright" means the exclusive right to apply a design to any article of manufacture or to any such substance as aforesaid in the class or classes in which the design is registered.

61. 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 such 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 any such article or substance as aforesaid, either exclusively of any other person or otherwise, and also every person on whom the property in such design or such 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. Definition of "proprietor."

PART IV.

Trade Marks.

Registration of Trade Marks.

62. (1.) The comptroller may, on application by or on behalf of any person claiming to be the proprietor of a trade mark, register the trade mark. Application for registration.

(2.) The application must be made in the form set forth in the

First Schedule to this Act, or in such other form as may be from time to time prescribed, and must be left at, or sent by post to [*the Patent Office in the prescribed manner*] **such place and in such manner as may be prescribed.**

Act, 1888, s. 8.

(3.) The application must be accompanied by the prescribed number of representations of the trade mark, and must state the particular goods or classes of goods in connexion with which the applicant desires the trade mark to be registered.

(4.) The comptroller may, if he thinks fit, refuse to register a trade mark, but any such refusal shall be subject to appeal to the Board of Trade, who shall, if required, hear the applicant and the comptroller, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(5.) The Board of Trade may, however, if it appears expedient, refer the appeal to the Court; and in that event the Court shall have jurisdiction to hear and determine the appeal and may make such order as aforesaid.

Act, 1888, s. 8.

(6.) Where an applicant for the registration of a trade mark otherwise than under an international convention is out of the United Kingdom at the time of making the application he shall give the comptroller an address for service in the United Kingdom, and if he fails to do so the application shall not be proceeded with until the address has been given.

Limit of time for proceeding with application.

63. Where registration of a trade mark has not been or shall not be completed within twelve months from the date of the application, by reason of default on the part of the applicant [*the application shall be deemed to be abandoned*], **the comptroller shall give notice of the non-completion to the agent employed on behalf of the applicant, and, if at the expiration of fourteen days from that notice the registration is not completed, shall give the like notice to the applicant, and if at the expiration of the latter fourteen days, or such further time as the comptroller may in special cases permit, the registration is not completed, the application shall be deemed to be abandoned.**

Act, 1888, s. 9.

Conditions of registration of trade mark.

Repealed. Act, 1888, s. 10.

64. [(1.) *For the purposes of this Act, a trade mark must consist of or contain at least one of the following essential particulars:*

(*a*) *A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or*

(*b*) *A written signature or copy of a written signature of the indi-*

vidual or firm applying for registration thereof as a trade mark; or

(*c*) *A distinctive device, mark, brand, heading, label, ticket, or fancy word or words not in common use.*

(2.) *There may be added to any one or more of these particulars any letters words or figures, or combination of letters words or figures, or of any of them.*

(3.) *Provided that any special and distinctive word or words letter, figure, or combination of letters or figures or of letters and figures used as a trade mark before the thirteenth day of August one thousand eight hundred and seventy-five may be registered as a trade mark under this part of this Act.*]

Conditions of registration of trade mark. Act, 1888, s. 10.

64. (1.) For the purposes of this Act, a trade mark must consist of or contain at least one of the following essential particulars:

(*a*) A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or

(*b*) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

(*c*) A distinctive device, mark, brand, heading, label, or ticket; or

(*d*) An invented word or invented words; or

(*e*) A word or words having no reference to the character or quality of the goods, and not being a geographical name.

(2.) There may be added to any one or more of the essential particulars mentioned in this section any letters, words, or figures, or combination of letters, words or figures, or of any of them, but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

(3.) Provided as follows:

(i) A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof:

(ii) Any special and distinctive word or words, letter, figure, or combination of letters or figures, or of letters and figures used as a trade mark before the thirteenth day of August one thousand eight hundred and seventy-five, may be registered as a trade mark under this part of this Act.

Connection of trade mark with goods.

65. A trade mark must be registered for particular goods or classes of goods.

Registration of a series of marks.

66. When a person claiming to be the proprietor of several trade marks which, while resembling each other in the material particulars thereof, yet differ in respect of (*a*) the statement of the goods for which they are respectively used or proposed to be used, or (*b*) statements of numbers, or (*c*) statements of price, or (*d*) statements of quality, or (*e*) statements of names of places, seeks to register such trade marks, they may be registered as a series in one registration. A series of trade marks shall be assignable and transmissible only as a whole, but for all other purposes each of the trade marks composing a series shall be deemed and treated as registered separately.

Trade marks may be registered in any colour.
Act, 1888, s. 11.

67. A trade mark may be registered in any colour **or colours,** and such registration shall (subject to the provisions of this Act) confer on the registered owner the exclusive right to use the same in that or any other colour **or colours.**

Advertisement of application.
Act, 1888, s. 12.

68. Every application for registration of a trade mark under this part of this Act shall as soon as may be after its receipt be advertised by the comptroller, **unless the comptroller refuse to entertain the application.**

Opposition to registration.
Act, 1888, s. 13, sub-ss. 1, 2.

69. (1.) Any person may within [*two months*] **one month or such further time, not exceeding three months, as the comptroller may allow,** of the [*first*] advertisement of the application, give notice in duplicate at the Patent Office of opposition to registration of the trade mark, and the comptroller shall send one copy of such notice to the applicant.

Act, 1888, s. 13, sub-s. 3.

(2.) Within [*two months*] **one month** after receipt of such notice or such further time as the comptroller may allow, the applicant may send to the comptroller a counter statement in duplicate of the grounds on which he relies for his application, and if he does not do so, shall be deemed to have abandoned his application.

Repealed.
Act, 1888, s. 13, sub-s. 4.

[(3.) *If the applicant sends such counter statement, the comptroller shall furnish a copy thereof to the person who gave notice of opposition, and shall require him to give security in such manner and to such amount as the comptroller may require for such costs as may be awarded in respect of*

such opposition; and if such security is not given within fourteen days after such requirement was made or such further time as the comptroller may allow, the opposition shall be deemed to be withdrawn.

(4.) If the person who gave notice of opposition duly gives such security as aforesaid, the comptroller shall inform the applicant thereof in writing, and thereupon the case shall be deemed to stand for the determination of the Court.]

Act, 1888, s. 13, sub-s. 4.

(3.) If the applicant sends such counter-statement the comptroller shall furnish a copy thereof to the person who gave notice of opposition, and shall, after hearing the applicant and the opponent, if so required, decide whether the trade mark is to be registered, but his decision shall be subject to appeal to the Board of Trade, who shall, if required, hear the applicant and the opponent and the comptroller, and may make an order determining whether, and subject to what conditions (if any), registration is to be permitted.

(4.) The Board of Trade may, however, if it appears expedient, refer the appeal to the Court, and in that event the Court shall have jurisdiction to hear and determine the appeal, and may make such order as aforesaid.

(5.) If the applicant abandons his application after notice of opposition in pursuance of this section, he shall be liable to pay to the opponent such costs in respect of the opposition as the comptroller may determine to be reasonable.

(6.) Where the opponent is out of the United Kingdom, he shall give the comptroller an address for service in the United Kingdom.

Assignment and transmission of trade mark.

70. A trade mark, when registered, shall be assigned and transmitted only in connexion with the goodwill of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that goodwill.

Conflicting claims to registration.

71. Where each of several persons claims to be registered as proprietor of the same trade mark, the comptroller may refuse to register any of them until their rights have been determined according to law, and the comptroller may himself submit or require the claimants to submit their rights to the Court.

Restrictions on registration.

72. (1.) Except where the Court has decided that two or more persons are entitled to be registered as proprietors of the same trade mark, the comptroller shall not register in respect of the same goods

or description of goods a trade mark identical with one already on the register with respect to such goods or description of goods.

Act, 1888, s. 14.

(2.) **Except as aforesaid** the comptroller shall not register with respect to the same goods or description of goods a trade mark [*so nearly resembling*] **having such resemblance to** a trade mark already on the register with respect to such goods or description of goods as to be calculated to deceive.

Further restriction on registration.

Act, 1888, s. 15.

73. It shall not be lawful to register as part of or in combination with a trade mark any words the [*exclusive*] use of which would by reason of their being calculated to deceive or otherwise, be deemed disentitled to protection in a court of justice, or any scandalous design.

Saving for power to provide for entry on register of common marks as additions to trade marks.

74. (1.) Nothing in this Act shall be construed to prevent the comptroller entering on the register, in the prescribed manner, and subject to the prescribed conditions, as an addition to any trade mark—

(*a*) In the case of an application for registration of a trade mark used before the thirteenth day of August one thousand eight hundred and seventy-five—

Any distinctive device, mark, brand, heading, label, ticket, letter, word or figure, or combination of letters, words, or figures, though the same is common to the trade in the goods with respect to which the application is made;

(*b*) In the case of an application for registration of a trade mark not used before the thirteenth day of August one thousand eight hundred and seventy-five—

Any distinctive word or combination of words, though the same is common to the trade in the goods with respect to which the application is made;

Act, 1888, s. 16.

[(2.) *The applicant for entry of any such common particular or particulars must, however, disclaim in his application any right to the exclusive use of the same, and a copy of the disclaimer shall be entered on the register.*]

Act, 1888, s. 16.

(2.) The applicant for registration of any such addition must, however, state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

Provided that a person need not under this section dis-

claim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.

(3.) Any device, mark, brand, heading, label, ticket, letter, word, figure, or combination of letters, words, or figures, which was or were, before the thirteenth day of August one thousand eight hundred and seventy-five, publicly used by more than three persons on the same or a similar description of goods shall, for the purposes of this section, be deemed common to the trade in such goods.

Effect of Registration.

75. [*Registration of a trade mark shall be deemed to be equivalent to public use of the trade mark.*] Registration equivalent to public use.

Application for registration of a trade mark shall be deemed to be equivalent to public use of the trade mark, and the date of the application shall for the purposes of this Act be deemed to be, and as from the first day of January one thousand eight hundred and seventy-six to have been, the date of the registration. Act, 1888, s. 17.

76. The registration of a person as proprietor of a trade mark shall be primâ facie evidence of his right to the exclusive use of the trade mark, and shall, after the expiration of five years from the date of the registration, be conclusive evidence of his right to the exclusive use of the trade mark, subject to the provisions of this Act. Right of first proprietor to exclusive use of trade mark.

77. A person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of a trade mark unless, in the case of a trade mark capable of being registered under this Act, it has been registered in pursuance of this Act, or of an enactment repealed by this Act, or, in the case of any other trade mark in use before the thirteenth of August one thousand eight hundred and seventy-five, registration thereof under this part of this Act, or of an enactment repealed by this Act, has been refused. The comptroller may, on request, and on payment of the prescribed fee, grant a certificate that such registration has been refused. Restrictions on actions for infringement, and on defence to action in certain cases.

77a. In an action for infringement of a registered trade mark the Court or a judge may certify that the right to the exclusive use of the trade mark came in question, and if the Court or a judge so certifies, then in any subsequent action for infringement the plaintiff in that action, on obtaining a final order or judgment Certificate as to exclusive use and costs thereon. Act, 1888, s. 18.

in his favour, shall have his full costs, charges, and expenses as between solicitor and client, unless the Court or judge trying the subsequent action certifies that he ought not to have the same.

Register of Trade Marks.

Register of trade marks.

78. There shall be kept at the patent office a book called the Register of Trade Marks, wherein shall be entered the names and addresses of proprietors of registered trade marks, notifications of assignments and of transmissions of trade marks, and such other matters as may be from time to time prescribed.

Removal of trade mark after fourteen years unless fee paid.

79. (1.) At a time not being less than two months nor more than three months before the expiration of fourteen years from the date of the registration of a trade mark, the comptroller shall send notice to the registered proprietor that the trade mark will be removed from the register unless the proprietor pays to the comptroller before the expiration of such fourteen years (naming the date at which the same will expire) the prescribed fee: and if such fee be not previously paid, he shall at the expiration of one month from the date of the giving of the first notice send a second notice to the same effect.

(2.) If such fee be not paid before the expiration of such fourteen years the comptroller may after the end of three months from the expiration of such fourteen years remove the mark from the register, and so from time to time at the expiration of every period of fourteen years.

(3.) If before the expiration of the said three months the registered proprietor pays the said fee together with the additional prescribed fee, the comptroller may without removing such trade mark from the register accept the said fee as if it had been paid before the expiration of the said fourteen years.

(4.) Where after the said three months a trade mark has been removed from the register for non-payment of the prescribed fee, the comptroller may, if satisfied that it is just so to do, restore such trade mark to the register on payment of the prescribed additional fee.

(5.) Where a trade mark has been removed from the register for non-payment of the fee or otherwise, such trade mark shall nevertheless for the purpose of any application for registration during [*the five years*] **one year** next after the date of such removal,

Act, 1888, s. 19, sub-s. 1.

be deemed to be a trade mark which is already registered, **unless it is shown to the satisfaction of the comptroller that the non-payment of the fee arises from the death or bankruptcy of the registered proprietor, or from his having ceased to carry on business, and that no person claiming under that proprietor or under his bankruptcy is using the trade mark.** **Act, 1888, s. 19, sub-s. 2.**

Fees.

80. There shall be paid in respect of applications and registration and other matters under this part of this Act, such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of her Majesty's Exchequer in such manner as the Treasury may from time to time direct. **Fees for registration, &c.**

Sheffield Marks.

81. With respect to the master, wardens, searchers, assistants, and commonalty of the Company of Cutlers in Hallamshire, in the county of York (in this Act called the Cutlers' Company) and the marks or devices (in this Act called Sheffield marks) assigned or registered by the master, wardens, searchers, and assistants of that company, the following provisions shall have effect: **Registration by Cutlers' Company of Sheffield marks.**

(1.) The Cutlers' Company shall establish and keep at Sheffield a new register of trade marks (in this Act called the Sheffield register):

[(2.) *The Cutlers' Company shall enter in the Sheffield register, in respect of cutlery, edge tools, or raw steel and the goods mentioned in the next sub-section all the trade marks entered before the commencement of this Act in respect of cutlery, edge tools, or raw steel and such goods in the register established under the Trade Marks Registration Act*, 1875, *belonging to persons carrying on business in Hallamshire, or within six miles thereof, and shall also enter in such register, in respect of the same goods, all the trade marks which shall have been assigned by the Cutlers' Company and actually used before the commencement of this Act, but which have not been entered in the register established under the Trade Marks Registration Act*, 1875:] **Act, 1888, s. 20, sub-s. 1.**

Act, 1888, s. 20, sub-s. 1.

(2.) The Cutlers' Company shall enter in the Sheffield register, in respect of metal goods as defined in this section, all the trade marks entered before the first day of January one thousand eight hundred and eighty-nine in respect of metal goods either in the register established under the Trade Marks Registration Act, 1875, or in the register of trade marks under this Act, belonging to persons carrying on business in Hallamshire or within six miles thereof. The Cutlers' Company shall also, on request made in the prescribed manner, enter in the Sheffield register, in respect of metal goods, all the trade marks which shall have been assigned by the Cutlers' Company and actually used before the first day of January one thousand eight hundred and eighty-four, but which have not been entered in either of the said other registers:

38 & 39 Vict. c. 91.

(3.) An application for registration of a trade mark used [*on cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge*] **on metal goods** shall, if made after the commencement of this Act by a person carrying on business in Hallamshire, or within six miles thereof, be made to the Cutlers' Company:

Act, 1888, s. 20, sub-s. 2.

(4.) Every application so made to the Cutlers' Company shall be notified to the comptroller in the prescribed manner, and unless the comptroller within the prescribed time gives notice to the Cutlers' Company that he objects to the acceptance of the application, it shall be proceeded with by the Cutlers' Company in the prescribed manner:

(5.) If the comptroller gives notice of objection as aforesaid, the application shall not be proceeded with by the Cutlers' Company, but any person aggrieved may appeal to the Court:

(6.) Upon the registration of a trade mark in the Sheffield register the Cutlers' Company shall give notice thereof to the comptroller, who shall thereupon enter the mark in the register of trade marks; and such registration shall bear date as of the day of application to the Cutlers' Company, and have the same effect as if the application had been made to the comptroller on that day:

Act, 1888, s. 20 sub-s. 3.

[(7.) *The provisions of this Act, and of any general rules made under this Act, with respect to application for registration in the*

register of trade marks, the effect of such registration, and the assignment and transmission of rights in a registered trade mark shall apply in the case of applications and registration in the Sheffield register; and notice of every entry made in the Sheffield register must be given to the comptroller by the Cutlers' Company, save and except that the provisions of this sub-section shall not prejudice or affect any life, estate, and interest of a widow of the holder of any Sheffield mark which may be in force in respect of such mark at the time when it shall be placed upon the Sheffield register:]

(7.) **The provisions of this Act and of any general rules made under this Act with respect to the registration of trade marks, and all matters relating thereto, shall, subject to the provisions of this section, apply to the registration of trade marks on metal goods by the Cutlers' Company, and to all matters relating thereto; and this Act and any such general rules shall, so far as applicable, be construed accordingly with the substitution of the Cutlers' Company, the office of the Cutlers' Company, and the Sheffield register, for the comptroller, the Patent Office, and the Register of Trade Marks, respectively; and notice of every entry, cancellation, or correction made in the Sheffield register shall be given to the comptroller by the Cutlers' Company: provided that this section shall not affect any life estate and interest of a widow of the holder of any Sheffield mark which may be in force in respect of such mark at the time when it shall be placed upon the Sheffield register:** **Act, 1888, s. 20, sub-s. 3.**

(8.) Where the comptroller receives from any person not carrying on business in Hallamshire or within six miles thereof an application for registration of a trade mark used [*on cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge*] **on metal goods,** he shall in the prescribed manner notify the application and proceedings thereon to the Cutlers' Company: **Act, 1888, s. 20, sub-s. 2.**

(9.) At the expiration of five years from the commencement of this Act the Cutlers' Company shall close the Cutlers' register of corporate trade marks, and thereupon all marks entered therein shall, unless entered in the Sheffield register, be deemed to have been abandoned:

(10.) A person may (notwithstanding anything in any Act relating to the Cutlers' Company) be registered in the Sheffield register as proprietor of two or more trade marks:

(11.) A body of persons, corporate or not corporate, may (notwithstanding anything in any Act relating to the Cutlers' Company) be registered in the Sheffield register as proprietor of a trade mark or trade marks:

(12.) Any person aggrieved by a decision of the Cutlers' Company in respect of anything done or omitted under this Act may, in the prescribed manner, appeal to the comptroller, who shall have power to confirm reverse or modify the decision, but the decision of the comptroller shall be subject to a further appeal to the Court:

(13.) So much of the Cutlers' Company's Acts as applies to the summary punishment of persons counterfeiting Sheffield corporate marks, that is to say, the fifth section of the Cutlers' Company's Act of 1814, and the provisions in relation to the recovery and application of the penalty imposed by such last-mentioned section contained in the Cutlers' Company's Act of 1791, shall apply to any mark entered in the Sheffield register:

Act, 1888, s. 20, sub-s. 4.

(14.) For the purposes of this section the expression "metal goods" means all metals, whether wrought, unwrought, or partly wrought, and all goods composed wholly or partly of any metal.

(15.) For the purpose of legal proceedings in relation to trade marks entered in the Sheffield register a certificate under the hand of the master of the Cutlers' Company shall have the same effect as the certificate of the comptroller.

PART V.

GENERAL.

Patent Office and Proceedings thereat.

Patent Office.

82. (1.) The Treasury may provide for the purposes of this Act an office with all requisite buildings and conveniences, which shall be called, and is in this Act referred to as, the Patent Office.

(2.) Until a new patent office is provided, the offices of the

Commissioners of Patents for inventions and for the registration of designs and trade marks existing at the commencement of this Act shall be the patent office within the meaning of this Act.

(3.) The patent office shall be under the immediate control of an officer called the comptroller-general of patents, designs, and trade marks, who shall act under the superintendence and direction of the Board of Trade.

(4.) Any act or thing directed to be done by or to the comptroller may, in his absence, be done by or to any officer for the time being in that behalf authorized by the Board of Trade.

Officers and clerks.

83. (1.) The Board of Trade may at any time after the passing of this Act, and from time to time, subject to the approval of the Treasury, appoint the comptroller-general of patents, designs, and trade marks, and so many examiners and other officers and clerks with such designations and duties as the Board of Trade think fit, and may from time to time remove any of those officers and clerks.

(2.) The salaries of those officers and clerks shall be appointed by the Board of Trade, with the concurrence of the Treasury, and the same and the other expenses of the execution of this Act shall be paid out of money provided by Parliament.

Seal of patent office.

84. There shall be a seal for the patent office, and impressions thereof shall be judicially noticed and admitted in evidence.

Trust not to be entered in registers.

85. There shall not be entered in any register kept under this Act, or be receivable by the comptroller, any notice of any trust expressed, implied or constructive.

Refusal to grant patent, &c., in certain cases.

86. The comptroller may refuse to grant a patent for an invention, or to register a design or trade mark, of which the use would, in his opinion, be contrary to law or morality.

Entry of assignments and transmissions in registers.

87. Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, or to the copyright in a registered design, or to a registered trade mark, the comptroller shall on request, and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the patent, copyright in the design, or trade mark, in the register of patents, designs, or trade marks, as the case may be. The person for the time being entered in the register of patents, designs or trade marks, as proprietor of a patent, copyright in a design or trade mark as the

Act, 1888, s. 21.

case may be, shall, subject to **the provisions of this Act and to** any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise deal with, the same and to give effectual receipts for any consideration for such assignment, licence, or dealing. Provided that any equities in respect of such patent, design, or trade mark may be enforced in like manner as in respect of any other personal property.

Inspection of and extracts from registers.

Act, 1888, s. 22.

88. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to **the provisions of this Act and to** such regulations as may be prescribed; and certified copies, sealed with the seal of the patent office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

Sealed copies to be received in evidence.

89. Printed or written copies or extracts, purporting to be certified by the comptroller and sealed with the seal of the patent office, of or from patents specifications disclaimers and other documents in the patent office, and of or from registers and other books kept there, shall be admitted in evidence in all Courts in her Majesty's dominions, and in all proceedings, without further proof or production of the originals.

Rectification of registers by court.

Act, 1888, s. 23.

90. (1.) The Court may on the application of any person aggrieved by the omission without sufficient cause of the name of any person **or of any other particulars** from any register kept under this Act, or by any entry made without sufficient cause in any such register, make such order for making, expunging, or varying the entry, as the Court thinks fit; or the Court may refuse the application; and in either case may make such order with respect to the costs of the proceedings as the Court thinks fit.

(2.) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3.) Any order of the Court rectifying a register shall direct that due notice of the rectification be given to the comptroller.

Power for comptroller to correct clerical errors.

91. The comptroller may, on request in writing accompanied by the prescribed fee,—

(*a*) Correct any clerical error in or in connexion with an appli-

cation for a patent, or for registration of a design or trade mark; or

(*b*) Correct any clerical error in the name, style, or address of the registered proprietor of a patent, design, or trade mark.

(*c*) Cancel the entry or part of the entry of a trade mark on the register: provided that the applicant accompanies his request by a statutory declaration made by himself, stating his name, address, and calling, and that he is the person whose name appears on the register as the proprietor of the said trade mark.

(*d*) **Permit an applicant for registration of a design or trade mark to amend his application by omitting any particular goods or classes of goods in connexion with which he has desired the design or trade mark to be registered.** Act, 1888, s. 24.

Alteration of registered mark.

92. (1.) The registered proprietor of any registered trade mark may apply to the Court for leave to add to or alter such mark in any particular, not being an essential particular within the meaning of this Act, and the Court may refuse or grant leave on such terms as it may think fit.

(2.) Notice of any intended application to the Court under this section shall be given to the comptroller by the applicant; and the comptroller shall be entitled to be heard on the application.

(3.) If the Court grants leave, the comptroller shall, on proof thereof and on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave.

Falsification of entries in registers.

93. If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanor.

Exercise of discretionary power by comptroller.

94. Where any discretionary power is by this Act given to the comptroller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of a specification, or for registration of a trade mark or design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his agent.

Power of comptroller to take directions of law officers.

95. The comptroller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to either of the law officers for directions in the matter.

Certificate of comptroller to be evidence.

96. A certificate purporting to be under the hand of the comptroller as to any entry, matter, or thing which he is authorized by this Act, or any general rules made thereunder, to make or do, shall be primâ facie evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Applications and notices by post.

97. (1.) Any application, notice, or other document authorized or required to be left, made, or given at the patent office or to the comptroller, or to any other person under this Act, may be sent by a prepaid letter through the post; and if so sent shall be deemed to have been left, made or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

(2.) In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

Provision as to days for leaving documents at office.

98. Whenever the last day fixed by this Act, or by any rule for the time being in force, for leaving any document or paying any fee at the patent office shall fall on Christmas Day, Good Friday, or on a Saturday or Sunday, or any day observed as a holiday at the Bank of England, or any day observed as a day of public fast or thanksgiving, herein referred to as excluded days, it shall be lawful to leave such document or to pay such fee on the day next following such excluded day, or days, if two or more of them occur consecutively.

Declaration by infant, lunatic, &c.

99. If any person is, by reason of infancy, lunacy or other inability, incapable of making any declaration or doing anything required or permitted by this Act or by any rules made under the authority of this Act, then the guardian or committee (if any) of such incapable person, or if there be none, any person appointed by any Court or judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration or a declaration as nearly corresponding thereto as cir-

cumstances permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall for the purposes of this Act be as effectual as if done by the person for whom he is substituted.

Transmission of certified printed copies of specifications, &c.

100. Copies of all specifications, drawings, and amendments left at the Patent Office after the commencement of this Act, printed for and sealed with the seal of the Patent Office, shall be transmitted to the Edinburgh Museum of Science and Art, and to the Enrolments Office of the Chancery Division in Ireland, and to the Rolls Office in the Isle of Man, within twenty-one days after the same shall respectively have been accepted or allowed at the Patent Office; and certified copies of or extracts from any such documents shall be given to any person requiring the same on payment of the prescribed fee; and any such copy or extract shall be admitted in evidence in all Courts in Scotland and Ireland and in the Isle of Man without further proof or production of the originals.

Power for Board of Trade to make general rules for classifying goods and regulating business of patent office.

101. (1.) The Board of Trade may from time to time make such general rules and do such things as they think expedient, subject to the provisions of this Act—

(*a*) For regulating the practice of registration under this Act:

(*b*) For classifying goods for the purposes of designs and trade marks:

(*c*) For making or requiring duplicates of specifications, amendment, drawings, and other documents:

(*d*) For securing and regulating the publishing and selling of copies, at such prices and in such manner as the Board of Trade think fit, of specifications, drawings, amendments and other documents:

(*e*) For securing and regulating the making, printing, publishing and selling of indexes to, and abridgments of, specifications and other documents in the Patent Office; and providing for the inspection of indexes and abridgments and other documents:

(*f*) For regulating (with the approval of the Treasury) the presentation of copies of Patent Office publications to patentees and to public authorities, bodies and institutions at home and abroad:

(*g*) Generally for regulating the business of the Patent Office,

and all things by this Act placed under the direction or control of the comptroller, or of the Board of Trade.

(2.) Any of the forms in the First Schedule to this Act may be altered or amended by rules made by the Board as aforesaid.

(3.) General rules may be made under this section at any time after the passing of this Act, but not so as to take effect before the commencement of this Act, and shall (subject as hereinafter mentioned) be of the same effect as if they were contained in this Act, and shall be judicially noticed.

(4.) Any rules made in pursuance of this section shall be laid before both Houses of Parliament, if Parliament be in session at the time of making thereof, or, if not, then as soon as practicable after the beginning of the then next session of Parliament, and they shall also be advertised twice in the official journal to be issued by the comptroller.

(5.) If either House of Parliament, within the next forty days after any rules have been so laid before such House, resolve that such rules or any of them ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such rules or rule or to the making of any new rules or rule.

Annual reports of comptroller.

102. The comptroller shall, before the first day of June in every year, cause a report respecting the execution by or under him of this Act to be laid before both Houses of Parliament, and therein shall include for the year to which each report relates all general rules made in that year under or for the purposes of this Act, and an account of all fees, salaries, and allowances, and other money received and paid under this Act.

Proceedings of Board of Trade.

Act, 1888, s. 25.

102a. (1.) All things required or authorized under this Act to be done by, to, or before the Board of Trade, may be done by, to, or before the President or a secretary or an assistant secretary of the Board.

(2.) All documents purporting to be orders made by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or by any person authorized in that behalf by the President of the Board, shall be received in evidence, and shall be deemed to be such orders without further proof, unless the contrary is shown.

(3.) A certificate, signed by the President of the Board of

Trade, that any order made or act done is the order or act of the Board, shall be conclusive evidence of the fact so certified.

International and Colonial Arrangements.

International arrangements for protection of inventions, designs, and trade marks.

103. (1.) If Her Majesty is pleased to make any arrangement with the government or governments of any foreign state or states for mutual protection of inventions, designs, and trade marks, or any of them, then any person who has applied for protection for any invention, design, or trade mark in any such state, shall be entitled to a patent for his invention or to registration of his design or trade mark (as the case may be) under this Act, in priority to other applicants; and such patent or registration shall have the same date as the [*date of the protection obtained*] **date of the application** in such foreign state.

Act, 1885, s. 6.

Provided that his application is made, in the case of a patent within seven months, and in the case of a design or trade mark within four months, from his applying for protection in the foreign state with which the arrangement is in force.

Provided that nothing in this section contained shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification, or the actual registration of his design or trade mark in this country, as the case may be.

(2.) The publication in the United Kingdom, or the Isle of Man, during the respective periods aforesaid, of any description of the invention, or the use therein during such periods of the invention, or the exhibition or use therein during such periods of the design, or the publication therein during such periods of a description or representation of the design, or the use therein during such periods of the trade mark, shall not invalidate the patent which may be granted for the invention, or the registration of the design or trade mark:

(3.) The application for the grant of a patent, or the registration of a design, or the registration of a trade mark under this section, must be made in the same manner as an ordinary application under this Act: provided that, in the case of trade marks, any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Act:

(4.) The provisions of this section shall apply only in the case

of those foreign states with respect to which Her Majesty shall from time to time by Order in Council declare them to be applicable, and so long only in the case of each state as the Order in Council shall continue in force with respect to that state.

Provision for colonies and India.

104. (1.) Where it is made to appear to Her Majesty that the legislature of any British possession has made satisfactory provision for the protection of inventions, designs, and trade marks, patented or registered in this country, it shall be lawful for Her Majesty from time to time by Order in Council to apply the provisions of the last preceding section, with such variations or additions, if any, as to Her Majesty in Council may seem fit, to such British possession.

(2.) An Order in Council under this Act shall, from a date to be mentioned for the purpose in the Order, take effect as if its provisions had been contained in this Act; but it shall be lawful for Her Majesty in Council to revoke any Order in Council made under this Act.

Offences.

Penalty on falsely representing articles to be patented.

105. (1.) Any person who represents that any article sold by him is a patented article, when no patent has been granted for the same, or describes any design or trade mark applied to any article sold by him as registered which is not so, shall be liable for every offence on summary conviction to a fine not exceeding five pounds.

(2.) A person shall be deemed, for the purposes of this enactment, to represent that an article is patented or a design or a trade mark is registered, if he sells the article with the word "patent," "patented," "registered," or any word or words expressing or implying that a patent or registration has been obtained for the article stamped, engraved, or impressed on, or otherwise applied to, the article.

Penalty on unauthorized assumption of Royal arms.

106. Any person who, without the authority of Her Majesty, or any of the Royal Family, or of any Government Department, assumes or uses in connexion with any trade, business, calling, or profession, the Royal arms, or arms so nearly resembling the same as to be calculated to deceive, in such a manner as to be calculated to lead other persons to believe that he is carrying on his trade, business, calling, or profession by or under such authority as aforesaid, shall be liable on summary conviction to a fine not exceeding twenty pounds.

Scotland, Ireland, &c.

Saving for Courts in Scotland.

107. In any action for infringement of a patent in Scotland the provisions of this Act, with respect to calling in the aid of an assessor, shall apply, and the action shall be tried without a jury, unless the Court shall otherwise direct, but otherwise nothing shall affect the jurisdiction and forms of process of the Courts in Scotland in such an action or in any action or proceeding respecting a patent hitherto competent to those Courts.

For the purposes of this section "Court of Appeal" shall mean any Court to which such action is appealed.

Summary proceedings in Scotland.

108. In Scotland any offence under this Act declared to be punishable on summary conviction may be prosecuted in the sheriff court.

Proceedings for revocation of patent in Scotland.

109. (1.) Proceedings in Scotland for revocation of a patent shall be in the form of an action of reduction at the instance of the Lord Advocate, or at the instance of a party having interest with his concurrence, which concurrence may be given on just cause shown only.

(2.) Service of all writs and summonses in that action shall be made according to the forms and practice existing at the commencement of this Act.

Reservation of remedies in Ireland.

110. All parties shall, notwithstanding anything in this Act, have in Ireland their remedies under or in respect of a patent as if the same had been granted to extend to Ireland only.

General saving for jurisdiction of Courts.

111. (1.) The provisions of this Act conferring a special jurisdiction on the Court as defined by this Act, shall not, except so far as the jurisdiction extends, affect the jurisdiction of any Court in Scotland or Ireland in any proceedings relating to patents or to designs or to trade marks; and with reference to any such proceedings in Scotland, the term "the Court" shall mean any Lord Ordinary of the Court of Session, and the term "Court of Appeal" shall mean either division of the said Court; and with reference to any such proceedings in Ireland, the terms "the Court" and "the Court of Appeal" respectively mean the High Court of Justice in Ireland and Her Majesty's Court of Appeal in Ireland.

(2.) If any rectification of a register under this Act is required in pursuance of any proceeding in a Court in Scotland or Ireland, a

copy of the order, decree, or other authority for the rectification, shall be served on the comptroller, and he shall rectify the register accordingly.

Isle of Man.

112. This Act shall extend to the Isle of Man, and—

(1.) Nothing in this Act shall affect the jurisdiction of the Courts in the Isle of Man, in proceedings for infringement or in any action or proceeding respecting a patent, design, or trade mark competent to those Courts;

(2) The punishment for a misdemeanor under this Act in the Isle of Man shall be imprisonment for any term not exceeding two years, with or without hard labour, and with or without a fine not exceeding one hundred pounds, at the discretion of the Court;

(3.) Any offence under this Act committed in the Isle of Man which would in England be punishable on summary conviction may be prosecuted, and any fine in respect thereof recovered at the instance of any person aggrieved, in the manner in which offences punishable on summary conviction may for the time being be prosecuted.

Jurisdiction of Lancashire Palatine Court.

Act, 1888, s. 26.

112a. The Court of Chancery of the County Palatine of Lancaster shall, with respect to any action or other proceeding in relation to trade marks the registration whereof is applied for in the Manchester Office, have the like jurisdiction under this Act as Her Majesty's High Court of Justice in England, and the expression "the Court" in this Act shall be construed and have effect accordingly.

Provided that every decision of the Court of Chancery of the County Palatine of Lancaster in pursuance of this section shall be subject to the like appeal as decisions of that Court in other cases.

Repeal, Transitional Provisions, Savings.

Repeal and saving for past operation of repealed enactments, &c.

113. The enactments described in the Third Schedule to this Act are hereby repealed. But this repeal of enactments shall not—

(*a*) Affect the past operation of any of those enactments, or any patent or copyright or right to use a trade mark granted or acquired, or application pending, or appointment made, or compensation granted, or order or direction made or given, or right, privilege, obligation, or liability acquired, accrued, or incurred, or anything duly

done or suffered under or by any of those enactments before or at the commencement of this Act; or

(*b*) Interfere with the institution or prosecution of any action or proceeding, civil or criminal, in respect thereof, and any such proceeding may be carried on as if this Act had not been passed; or

(*c*) Take away or abridge any protection or benefit in relation to any such action or proceeding.

Former registers to be deemed continued.

114. (1.) The registers of patents and of proprietors kept under any enactment repealed by this Act shall respectively be deemed parts of the same book as the register of patents kept under this Act.

(2.) The registers of designs and of trade marks kept under any enactment repealed by this Act shall respectively be deemed parts of the same book as the register of designs and the register of trade marks kept under this Act.

Saving for existing rules.

115. All general rules made by the Lord Chancellor or by any other authority under any enactment repealed by this Act, and in force at the commencement of this Act, may at any time after the passing of this Act be repealed altered or amended by the Board of Trade, as if they had been made by the Board under this Act, but so that no such repeal alteration or amendment shall take effect before the commencement of this Act; and, subject as aforesaid, such general rules shall, so far as they are consistent with and are not superseded by this Act, continue in force as if they had been made by the Board of Trade under this Act.

Saving for prerogative.

116. Nothing in this Act shall take away abridge or prejudicially affect the prerogative of the Crown in relation to the granting of any letters patent or to the withholding of a grant thereof.

General Definitions.

General definitions.

117. (1.) In and for the purposes of this Act, unless the context otherwise requires,—

"Person" includes a body corporate:

"The Court" means (subject to the provisions for Scotland, Ireland, and the Isle of Man) Her Majesty's High Court of Justice in England:

"Law officer" means Her Majesty's Attorney-General or Solicitor-General for England:

"The Treasury" means the Commissioners of Her Majesty's Treasury:

"Comptroller" means the Comptroller General of Patents, Designs, and Trade Marks:

"Prescribed" means prescribed by any of the Schedules to this Act, or by general rules under or within the meaning of this Act:

"British possession" means any territory or place situate within Her Majesty's dominions, and not being or forming part of the United Kingdom, or of the Channel Islands, or of the Isle of Man, and all territories and places under one legislature, as hereinafter defined, are deemed to be one British possession for the purposes of this Act:

"Legislature" includes any person or persons who exercise legislative authority in the British possession; and where there are local legislatures as well as a central legislature, means the central legislature only.

In the application of this Act to Ireland, "summary conviction" means a conviction under the Summary Jurisdiction Acts, that is to say, with reference to the Dublin Metropolitan Police District the Acts regulating the duties of justices of the peace and of the police for such district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and any Act amending it.

Register of patent agents. Act, 1888, s. 1.

(1.) After the first day of July one thousand eight hundred and eighty-nine a person shall not be entitled to describe himself as a patent agent, whether by advertisement, by description on his place of business, by any document issued by him, or otherwise, unless he is registered as a patent agent in pursuance of this Act.

(2.) The Board of Trade shall, as soon as may be after the passing of this Act, and may from time to time, make such general rules as are in the opinion of the Board required for giving effect to this section, and the provisions of section one hundred and one of the principal Act shall apply to all rules so made as if they were made in pursuance of that section.

(3.) Provided that every person who proves to the satisfaction of the Board of Trade that prior to the passing of this Act he had been bona fide practising as a patent agent shall be entitled to be registered as a patent agent in pursuance of this Act.

(4.) If any person knowingly describes himself as a patent agent in contravention of this section he shall be liable on summary conviction to a fine not exceeding twenty pounds.

(5.) In this section "patent agent" means exclusively an agent for obtaining patents in the United Kingdom.

SCHEDULES.

The First Schedule.

FORMS OF APPLICATION, &c.

FORM A.

Section 5.

[£1 Stamp.] Form of Application for Patent.

See *Forms A*, *A1*, *Patents Rules*, 1885.

FORM B.

Form of Provisional Specification.

See *Form B*, *Patents Rules*, 1885.

FORM C.

[£3 Stamp.] Form of Complete Specification.

See Form C, *Patents Rules*, 1885.

FORM D.

Section 33.

Form of Patent.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith: To all to whom these presents shall come greeting:

Whereas *John Smith*, of 29, *Perry Street*, *Birmingham*, in the county of *Warwick*, *Engineer*, hath by his solemn declaration represented unto us that he is in possession of an invention for "*Improvements in Sewing Machines*," that he is the true and first inventor thereof, and that the same is not in use by any other person to the best of his knowledge and belief:

And whereas the said inventor hath humbly prayed that we would be graciously pleased to grant unto him (hereinafter together with his executors, administrators, and assigns, or any of them, referred to as the said patentee) our Royal Letters Patent for the sole use and advantage of his said invention:

And whereas the said inventor hath by and in his complete specification particularly described the nature of his invention:

And whereas we being willing to encourage all inventions which may be for the public good, are graciously pleased to condescend to his request:

Know ye, therefore, that We, of our especial grace, certain knowledge, and mere motion do by these presents, for us, our heirs and successors, give and grant unto the said patentee our especial licence, full power, sole privilege, and authority, that the said patentee by himself, his agents, or licensees, and no others, may at all times hereafter during the term of years herein mentioned, make, use, exercise, and vend the said invention within our United Kingdom of Great Britain and Ireland, and Isle of Man, in such manner as to him or them may seem meet, and that the said patentee shall have and enjoy the whole profit and advantage from time to time accruing by reason of the said invention, during the term of fourteen years from the date hereunder written of these presents: And to the end that the said patentee may have and enjoy the sole use and exercise and the full benefit of the said invention, We do by these presents for us our heirs and successors, strictly command all our subjects whatsoever within our United Kingdom of Great Britain and Ireland, and the Isle of Man, that they do not at any time during the continuance of the said term of fourteen years either directly or indirectly make use of or put in practice the said invention, or any part of the same, nor in anywise imitate the same, nor make or cause to be made any addition thereto or subtraction therefrom, whereby to pretend themselves the inventors thereof, without the consent licence or agreement of the said patentee in writing under his hand and seal, on pain of incurring such penalties as may be justly inflicted on such offenders for their contempt of this our Royal command, and of being answerable to the patentee according to law for his damages thereby occasioned: Provided that these our letters patent are on this condition, that, if at any time during the said term it be

made to appear to us, our heirs, or successors, or any six or more of our Privy Council, that this our grant is contrary to law, or prejudicial or inconvenient to our subjects in general, or that the said invention is not a new invention as to the public use and exercise thereof within our United Kingdom of Great Britain and Ireland, and Isle of Man, or that the said patentee is not the first and true inventor thereof within this realm as aforesaid, these our letters patent shall forthwith determine, and be void to all intents and purposes, notwithstanding anything hereinbefore contained: Provided also, that if the said patentee shall not pay all fees by law required to be paid in respect of the grant of these letters patent, or in respect of any matter relating thereto at the time or times, and in manner for the time being by law provided; and also if the said patentee shall not supply or cause to be supplied, for our service all such articles of the said invention as may be required by the officers or commissioners administering any department of our service in such manner, at such times, and at and upon such reasonable prices and terms as shall be settled in manner for the time being by law provided, then, and in any of the said cases, these our letters patent, and all privileges and advantages whatever hereby granted shall determine and become void notwithstanding anything hereinbefore contained: Provided also that nothing herein contained shall prevent the granting of licences in such manner and for such considerations as they may by law be granted: And lastly, we do by these presents for us, our heirs and successors, grant unto the said patentee that these our letters patent shall be construed in the most beneficial sense for the advantage of the said patentee. In witness whereof we have caused these our letters to be made patent this one thousand eight hundred and

and to be sealed as of the one thousand eight hundred and

Seal of Patent Office.

Section 47.

FORM E.

FORM OF APPLICATION FOR REGISTRATION OF DESIGN.

See *Form E, Designs Rules*, 1883.

Section 62.

FORM F.

FORM OF APPLICATION FOR REGISTRATION OF TRADE MARK.

See *Form F, Trade Marks Rules*, 1883.

Section 24.

THE SECOND SCHEDULE.

Fees on instruments for obtaining Patents, and Renewal.

(a) *Up to sealing.*

	£	s.	d.	£	s.	d.
On application for provisional protection	1	0	0			
On filing complete specification	3	0	0			
				4	0	0
or,						
On filing complete specification with first application				4	0	0

(b) *Further before end of four years from date of patent.*

On certificate of renewal	50	0	0

(c) *Further before end of seven years, or in the case of patents granted after the commencement of this Act, before the end of eight years from date of patent.*

On certificate of renewal	100	0	0

Or in lieu of the fees of £50 *and* £100 *the following annual fees:—*

Before the expiration of the fourth year from the date of the patent						10	0	0
,,	,,	fifth	,,	,,		10	0	0
,,	,,	sixth	,,	,,		10	0	0
,,	,,	seventh	,,	,,		10	0	0
,,	,,	eighth	,,	,,		15	0	0
,,	,,	ninth	,,	,,		15	0	0
,,	,,	tenth	,,	,,		20	0	0
,,	,,	eleventh	,,	,,		20	0	0
,,	,,	twelfth	,,	,,		20	0	0
,,	,,	thirteenth	,,	,,		20	0	0

THE THIRD SCHEDULE.

Section 113.

Enactments repealed.

21 James 1, c. 3. [1623.]	The Statute of Monopolies. In part; namely,— Sections ten, eleven, and twelve.
5 & 6 Will. 4, c. 62. [1835.] In part.	The Statutory Declarations Act, 1835. In part; namely,— Section eleven.
5 & 6 Will. 4, c. 83. [1835.]	An Act to amend the law touching letters patent for inventions.
2 & 3 Vict. c. 67. [1839.]	An Act to amend an Act of the fifth and sixth years of the reign of King William the Fourth, intituled "An Act to amend the law touching letters patent for inventions."
5 & 6 Vict. c. 100. [1842.]	An Act to consolidate and amend the laws relating to the copyright of designs for ornamenting articles of manufacture.
6 & 7 Vict. c. 65. [1843.]	An Act to amend the laws relating to the copyright of designs.
7 & 8 Vict. c. 69 (*a*) [1844.] In part.	An Act for amending an Act passed in the fourth year of the reign of his late Majesty, intituled "An Act for the better administration of justice in his Majesty's Privy Council, and to extend its jurisdiction and powers." In part; namely,— Sections two to five, both included.
13 & 14 Vict. c. 104. [1850.]	An Act to extend and amend the Acts relating to the copyright of designs.
15 & 16 Vict. c. 83. [1852.]	The Patent Law Amendment Act, 1852.
16 & 17 Vict. c. 5. [1853.]	An Act to substitute stamp duties for fees on passing letters patent for inventions, and to provide for the purchase for the public use of certain indexes of specifications.
16 & 17 Vict. c. 115. [1853.]	An Act to amend certain provisions of the Patent Law Amendment Act, 1852, in respect of the transmission of certified copies of letters patent and specifications to certain offices in Edinburgh and Dublin, and otherwise to amend the said Act.
21 & 22 Vict. c. 70. [1858.]	An Act to amend the Act of the fifth and sixth years of her present Majesty, to consolidate and amend the laws relating to the copyright of designs for ornamenting articles of manufacture.
22 Vict. c. 13. [1859.]	An Act to amend the law concerning patents for inventions with respect to inventions for improvements in instruments and munitions of war.
24 & 25 Vict. c. 73. [1861.]	An Act to amend the law relating to the copyright of designs.
28 & 29 Vict. c. 3. [1865.]	The Industrial Exhibitions Act, 1865.
33 & 34 Vict. c. 27. [1870.]	The Protection of Inventions Act, 1870.
33 & 34 Vict. c. 97. [1870.]	The Stamp Act, 1870. In part; namely,— Section sixty-five, and in the Schedule the words and figures "Certificate of the registration of a design ..... £5 0 0 And see section 65."

(*a*) *Note.*—Sections six and seven of this Act are repealed by the Statute Law Revision (No. 2) Act, 1874.

38 & 39 Vict. c. 91. [1875.]	The Trade Marks Registration Act, 1875.
38 & 39 Vict. c. 93. [1875.]	The Copyright of Designs Act, 1875.
39 & 40 Vict. c. 33. [1876.]	The Trade Marks Registration Amendment Act, 1876.
40 & 41 Vict. c. 37. [1877.]	The Trade Marks Registration Extension Act, 1877.
43 & 44 Vict. c. 10. [1880.]	The Great Seal Act, 1880. In part; namely,— Section five.
45 & 46 Vict. c. 72. [1882.]	The Revenue, Friendly Societies, and National Debt Act, 1882. In part; namely,— Section sixteen.

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