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Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce

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PRINCIPALES LOIS ET REGLEMENTATIONS CONSACREES A LA PROPRIETE INTELLECTUELLE NOTIFIEES AU TITRE DE L'ARTICLE 63:2 DE L'ACCORD

Irlande

Le présent document contient le texte des lois et réglementations ci-après¹, notifiées par l'Irlande au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/IRL/1):

	<u>Page</u>
- Loi de 1927 sur (la protection de) la propriété industrielle et commerciale (n° 16 de 1927)	2
- Ordonnance d'entrée en vigueur de la Loi de 1927 sur (la protection de) la propriété industrielle et commerciale (n° 60 de 1927)	76

¹Anglais seulement.

SAORSTAT ÉIREANN

Number 16 of 1927.

INDUSTRIAL AND COMMERCIAL PROPERTY (PROTECTION) ACT, 1927.

ARRANGEMENT OF SECTIONS. PRELIMINARY.

Section.

1. Short title.
2. Commencement of Act.
3. Definitions.
4. Repeals.

PART I.

5. Establishment of Industrial and Commercial Property Registration Office.
6. Appointment of Controller of Industrial and Commercial Property.
7. Controller to be a corporation and have official seal.
8. Appointment of officers of controller.
9. Fees to be charged by controller.
10. Controller to publish Official Journal and other documents.

PART II.—PATENTS.

11. Application for patent generally.
12. Application for patent in certain cases.
13. Specifications of inventions.
14. Proceedings upon application.
15. Provisional protection.
16. Time for leaving complete specifications.
17. Comparison of provisional and complete specifications.
18. Time for acceptance of complete specification.
19. Documents to accompany specifications.
20. Investigation of specifications published previous to application.
21. Investigation of specifications published subsequent to application.
22. Advertisement on acceptance of complete specification.
23. Effect of acceptance of complete specification.
24. Opposition to grant of patent.
25. Grant and sealing of patent.
26. Abandoned or void application.
27. Date of patent.
28. Effect and form of patent.
29. Effect of existing British patents.
30. Fraudulent applications for patents.
31. Single patent for cognate inventions.
32. Term of patent.
33. Effect of failure to pay fees.
34. Extension of term of patent.
35. Patents of addition.
36. Restoration of lapsed patents.
37. Amendment of specification by controller.
38. Amendment of specification by the court.
39. Restriction on damages where specification amended.
40. Provisions as to patents indorsed "licences of right."

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[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

Section.

41. Revocation of patents by court.
42. Revocation of patents by controller.
43. Prevention of abuse of monopoly rights.
44. Operation of order for grant of licence.
45. Register of patents.
46. Inventor or patentee may assign benefit to Minister.
47. Inventions relating to instruments or munitions of war.
48. Hearing with assessor.
49. Counterclaim for revocation of patent.
50. Power of court to grant relief in respect of particular claims.
51. Exemption of innocent infringer from liability for damages.
52. Order for injunction or inspection.
53. Grant of patent to two or more persons.
54. Avoidance of certain conditions attached to the sale, etc., of patented articles.
55. Chemical products and substances intended for food or medicine.
56. Acts which do not amount to anticipation.
57. Discrepancies between provisional and complete specifications.
58. Rights of representative of deceased inventor.
59. Loss or destruction of patent.
60. Publication of invention at certain exhibitions.
61. Use of invention on foreign vessels in home waters.
62. Patent agents to be registered.
63. Management of register of patent agents.

PART III.—DESIGNS.

64. Registration of designs generally.
65. Registration of designs in certain cases.
66. Registration of designs registered in Patent Office in London.
67. Registration of designs in new classes.
68. Certificate of registration.
69. Register of designs.
70. Copyright in registered designs.
71. Requirements before delivery on sale.
72. No publication by confidential disclosure of design.
73. Inspection of registered designs.
74. Information as to existence of registration.
75. Cancellation of registration of design.
76. Publication of designs at certain exhibitions.
77. Ministers may acquire designs.
78. Prohibition of infringement of copyright in design.
79. Applications abandoned or refused.

PART IV.—TRADE MARKS.

80. Register of trade marks.
81. Trade mark must be for particular goods.
82. Requisites for registration in Part A.
83. Colour of trade marks.
84. Deceptive or misleading trade marks.
85. Application for registration in Part A.
86. Application for registration in Part B.
87. Translation of applications from Part A to Part B.
88. Registration of trade marks in certain cases.
89. Registration of trade marks registered in Patent Office in London.

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

Section.

90. Advertisement of application.
91. Opposition to registration.
92. Disclaimer of non-distinctive elements.
93. Date of registration.
94. Certificate of registration.
95. Delay in completion of registration.
96. Identical trade marks.
97. Rival claims to identical marks.
98. Concurrent user.
99. Assignment and transmission of trade marks.
100. Apportionment of trade marks on dissolution of partnership.
101. Associated trade marks.
102. Combined trade marks.
103. Series of trade marks.
104. Assignment and user of associated trade marks.
105. Duration of registration.
106. Renewal of registration.
107. Procedure on expiry of period of registration.
108. Status of unrenewed trade mark.
109. Removal from register of word trade marks used as name of articles.
110. Alteration of registered trade mark.
111. Non-user of trade mark.
112. Powers of registered proprietor.
113. Rights of registered proprietor.
114. Effect of registration in Part B.
115. Registration to be *prima facie* evidence of validity.
116. Registration to be conclusive after seven years.
117. Unregistered trade mark.
118. Admission of evidence of trade usages.
119. No interference with use of own name, etc.
120. Remedies for "passing off" not affected.
121. Registration of marks by Misisters.
122. Misuse of trade marks indicative of Irish origin.
123. Trade marks used solely as certificates of quality, etc.

PART V.

GENERAL PROVISIONS RELATING TO
 PATENTS, DESIGNS AND
 TRADE MARKS.

124. Trusts not to be entered in registers.
125. Inspection of and extracts from registers.
126. Reports of officers to be privileged.
127. Registration of assignments, etc.
128. Power of controller to amend register.
129. Power of court to amend register.
130. Rights of State in respect of patented inventions and registered designs.
131. Remedy in case of groundless threats of legal proceedings.
132. Certificate of validity questioned and costs thereon.
133. Procedure on appeals to law officer.
134. Exercise of discretionary power by controller.
135. Costs and security for costs.
136. Controller may consult law officer.
137. Recognition of agents.
138. Inventions, etc., contrary to law or morality.
139. Controller to make annual reports.
140. Minister may refer appeals to court.
141. Minister may delegate his duties under this Act.

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

Section.

- 142. Evidence before controller.
- 143. Appearance of controller in proceedings for rectification.
- 144. Costs of controller in court proceedings.
- 145. Certificate of controller to be evidence.
- 146. Sealed copies of documents in office to be evidence.
- 147. Notices may be sent by post.
- 148. Excluded days.
- 149. Declarations by infants, lunatics, etc.
- 150. Offences.
- 151. Unauthorised user of State badges.
- 152. International arrangements.
- 153. Minister may make general rules, etc.

PART VI.—COPYRIGHT.

- 154. Copyright.
- 155. Infringement of copyright.
- 156. Term of copyright.
- 157. Compulsory licences.
- 158. Ownership of copyright, etc.
- 159. Civil remedies for infringement of copyright.
- 160. Rights in respect of infringing copies, etc.
- 161. Exemption of innocent infringer from certain liabilities.
- 162. Restriction on remedies in the case of architecture.
- 163. Limitation of actions.
- 164. Penalties for dealing with infringing copies.
- 165. Importation of copies.
- 166. Works of joint authors.
- 167. Posthumous works.
- 168. Copyright in Government publications.
- 169. Copyright in mechanical musical instruments.
- 170. Reports of political speeches.
- 171. Copyright in photographs.
- 172. Application of this Part of this Act to registered designs.
- 173. Works of foreign authors.
- 174. Preservation of existing copyrights.
- 175. Power to extend the benefit of this Part of this Act to
works first published in a British dominion or foreign
country.
- 176. Abrogation of common law rights.
- 177. Definitions and interpretation.

PART VII.

MISCELLANEOUS PROVISIONS IN RELATION
TO COPYRIGHT.

- 178. Delivery of books to libraries.
- 179. Registration of artistic work defining a design.
- 180. Application of Part VI. of this Act to artistic work
defining a design.
- 181. Register to be kept by proprietors of theatres, etc.
- 182. Seizure, etc., of pirated copies of musical works.
- 183. Seizure of pirated works on request of copyright owner.
- 184. Penalties for being in possession of pirated copies.
- 185. Right of entry by police for execution of this Part of this
Act.
- 186. Penalty for certain offences.
- 187. Definitions.

FIRST SCHEDULE.

Enactments repealed.

SECOND SCHEDULE.

Maximum Fees.

SAORSTÁT ÉIREANN.

*Number 16 of 1927.*INDUSTRIAL AND COMMERCIAL PROPERTY
(PROTECTION) ACT, 1927.

AN ACT TO MAKE PROVISION FOR THE GRANTING OF
PATENTS FOR INVENTIONS, THE REGISTRATION OF
DESIGNS AND TRADE MARKS, AND THE DEFINITION
AND PROTECTION OF COPYRIGHT IN SAORSTÁT
ÉIREANN. [20th May, 1927.]

BE IT ENACTED BY THE OIREACHTAS OF SAORSTÁT
ÉIREANN AS FOLLOWS:—

PRELIMINARY.

1.—This Act may be cited as the Industrial and Commercial Short title.
Property (Protection) Act, 1927.

2.—This Act shall come into operation on such day or days as Commencement
may be fixed therefor by any order or orders of the Executive of Act.
Council, either generally or with reference to any particular Part
of this Act, and different days may be fixed for the commence-
ment of different Parts of this Act, but so that no such day be
later than six months after the passing of this Act.

3.—In this Act—

Definitions.

the word “ patent ” means letters patent for an invention;
the expression “ British patent ” means a patent granted by
the Patent Office in London;
the word “ patentee ” means the person for the time being
entered on the register as the grantee or proprietor of the patent;
the word “ invention ” means any new and useful art, process,
machine, manufacture or composition of matter, or any new and
useful improvement in any art, process, machine, manufacture or
composition of matter, and includes an alleged invention;
subject to the provisions of this Act, the words “ inventor ” and
“ applicant ” respectively include the legal representative of a
deceased inventor or applicant;
the word “ design ” means only the features of shape, configura-
tion, pattern, or ornament applied to any article by any indus-
trial process or means, whether manual, mechanical, or chemical,
separate or combined, which in the finished article appeal to and
are judged solely by the eye, but does not include any mode or
principle of construction, or anything which is in substance a
mere mechanical device;
the word “ article ” means (as respects designs) any article of
manufacture and any substance artificial or natural or partly
artificial and partly natural;
the word “ copyright ” when used in relation to a design regis-
tered under Part III. of this Act means the exclusive right to
apply the design to any article in any class in which the design
is registered;
the expression “ proprietor of a new or original design ”—
(a) where the author of the design, for good consideration,
executes the design for some other person, means the
person for whom the design is so executed, and
(b) where any person acquires the design or the right to
apply the design to any article either exclusively of
any other person or otherwise, means, in the respect
and to the extent in and to which the design or right

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

has been so acquired, the person by whom the design or right is so acquired, and

(c) in any other case means the author of the design, and where the property in, or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person;

the expression "working on a commercial scale" means the manufacture of the article or the carrying on of the process described and claimed in a specification for a patent in or by means of a definite and substantial establishment or organisation, and on a scale which is adequate and reasonable in all the circumstances;

the word "mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof;

the expression "trade mark" means a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale;

the word "controller" means the Controller of Industrial and Commercial Property appointed under this Act;

the expression "the Office" means the Industrial and Commercial Property Registration Office established pursuant to this Act;

the word "Journal" means the Official Journal of Industrial and Commercial Property issued by the controller pursuant to this Act;

the expression "the register" means the appropriate register kept pursuant to this Act;

the expression "British register" means the appropriate register kept in the Patent Office in London pursuant to the statutes relating to that Office;

the expression "Patent Office in London" means the office in London called the Patent Office and maintained under the statutes relating to the granting of patents for inventions and the registration of designs and trade marks in the late United Kingdom and in Great Britain;

the expression "late United Kingdom" means the late United Kingdom of Great Britain and Ireland;

the expression "self-governing British dominions" means and includes the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland;

the expression "British dominions" includes Great Britain and Northern Ireland and (save where the context otherwise requires) the self-governing British dominions;

the expression "the Minister" means the Minister for Industry and Commerce;

the expression "Law Officer" means the Attorney-General of Saorstát Éireann;

the word "prescribed" means prescribed by general rules made under this Act;

the word "court" means the High Court of Justice in Saorstát Éireann.

Repeals.

4.—The Acts mentioned in the First Schedule to this Act are hereby repealed to the extent mentioned in the third column of the said Schedule.

PART I.

ESTABLISHMENT OF INDUSTRIAL AND COMMERCIAL
PROPERTY REGISTRATION OFFICE.

Establishment of
Industrial and
Commercial
Property
Registration
Office.

5.—(1) There shall be established an Industrial and Commercial Property Registration Office for the purposes of this Act and such other purposes as may hereafter be assigned to it by the Oireachtas.

[1927.] *Industrial and Commercial Property (Protection) Act, 1927.* [No. 16.]

(2) The Office shall be divided into two branches, namely—

- (a) a Patents Branch, in which shall be transacted and done all such business, matters, and things as are by this Act or otherwise by law directed to be transacted or done in the Office in relation to patents;
- (b) a Designs and Trade Marks Branch, in which shall be transacted and done all such business, matters, and things as are by this Act or otherwise by law directed to be transacted or done in the Office in relation to designs or in relation to trade marks;

(3) The Office shall be under the immediate control of the Controller of Industrial and Commercial Property who shall act under the general superintendence and direction of the Minister.

6.—(1) The Executive Council shall as soon as may be after the passing of this Act and thereafter as occasion arises appoint a fit person to the office of Controller of Industrial and Commercial Property, who shall hold office for such time and on such terms as the Executive Council shall appoint. **Appointment of Controller of Industrial and Commercial Property.**

(2) Every person appointed to be controller under this Act shall receive such remuneration as the Minister for Finance shall determine.

(3) Subject to his being in good health at the time of appointment and notwithstanding that he is appointed without a certificate from the Civil Service Commissioners, the controller shall, if appointed permanently, be deemed to be employed in the permanent Civil Service of Saorstát Éireann and there may be granted to him on retirement or to his legal personal representative on death such superannuation or other allowance or gratuity as might under the Superannuation Acts for the time being in force have been granted had he been in the permanent Civil Service of Saorstát Éireann.

(4) Whenever the controller is temporarily unable to attend to his duties, or his office is vacant, the Minister may appoint a fit person to perform the duties of the controller under this Act during such inability or vacancy, and every person so appointed shall during his appointment have all the powers of the controller under this Act, and shall receive such remuneration, out of moneys to be provided by the Oireachtas, as the Minister shall, with the sanction of the Minister for Finance, direct.

7.—(1) The Controller of Industrial and Commercial Property shall be a corporation sole under that name with perpetual succession and an official seal, and may sue and be sued by the name aforesaid. **Controller to be a corporation and have official seal.**

(2) Impressions of the official seal of the Controller of Industrial and Commercial Property shall be judicially noticed and admitted in evidence.

8.—(1) The Minister shall appoint such persons to be officers of the controller, as, subject to the sanction of the Minister for Finance as to number, he may consider necessary for the purposes of this Act, and those officers shall hold office upon such terms and be remunerated at such rates and in such manner as the Minister for Finance may sanction. **Appointment of officers of controller.**

(2) The salaries or remuneration of the controller and his officers, and such other expenses of carrying this Act into effect as may be sanctioned by the Minister for Finance shall be paid out of moneys provided by the Oireachtas.

9.—(1) There shall be charged by the controller and paid in respect of the grant of patents and the registration of designs, trade marks and artistic works, and applications therefor, and in respect of other matters in relation to patents, designs, trade marks and artistic works under this Act, such fees as may from time to time be prescribed by the Minister with the sanction of **Fees to be charged by controller.**

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

the Minister for Finance, so however that the fees prescribed in respect of the instruments and matters mentioned in the Second Schedule to this Act shall not exceed the fees respectively specified in that Schedule.

(2) All fees charged by the controller under this section shall be collected and accounted for in such manner as shall be prescribed by the Minister, with the sanction of the Minister for Finance.

Controller to
publish Official
Journal and
other documents.

10.—(1) The controller shall issue periodically an illustrated journal of patented inventions, registered designs, and registered trade marks to be called the Official Journal of Industrial and Commercial Property, and shall publish therein all such matters as are directed by this Act or otherwise by law to be published therein and such other matters and information as may appear to be useful or important to proprietors of patents, designs, trade marks, or copyright granted, registered, or subsisting in Saorstát Éireann.

(2) The controller may issue periodically either in or as a supplement to the Journal or as a separate publication reports of—

(a) cases relating to patents, designs, trade marks or copyright decided by courts of law in Saorstát Éireann, and

(b) such cases relating to patents, designs, trade marks, or copyright decided by courts of law outside Saorstát Éireann as the controller may consider to be useful or important to proprietors of patents, designs, trade marks, or copyright granted, registered, or subsisting in Saorstát Éireann.

(3) The controller may prepare and publish indexes, abridgments of specifications, catalogues and other works relating to inventions, patents, designs, and trade marks.

(4) The controller shall make provision for keeping on sale copies of all documents which he is by this section directed or authorised to issue or publish, and also of all complete specifications (together with any accompanying drawings) of patents in force other than British Patents which by virtue of this Act are deemed to be patents granted under this Act.

PART II.—PATENTS.

Application for
patent generally.

11.—(1) An application for a patent may be made by any person who claims to be the true and first inventor of an invention, whether he is or is not an alien, and whether alone or jointly with any other person.

(2) The application must be made in the prescribed form, and must be left at, or sent by post to, the Office in the prescribed manner.

(3) The application must contain a declaration or (if so prescribed) a statutory declaration to the effect that the applicant is in possession of an invention of which, so far as the applicant knows or has been able to ascertain, he, or in the case of a joint application, one at least of the applicants, is the true and first inventor, and for which he desires to obtain a patent.

(4) Every application for a patent must be accompanied by either a provisional or a complete specification.

(5) In the case of a joint application, the declaration required by this section must be made by all the applicants.

Application for
patent in
certain cases.

12.—(1) Any person or the legal representative or assignee of any person who applied after the 6th day of December, 1921 and before the commencement of this Part of this Act to the Minister for Economic Affairs of the late Provisional Government of Ireland or to the Minister for Industry and Commerce of Saorstát Éireann for a patent or protection in respect of an invention shall be entitled to apply under this Act within one year after the commencement of this Part of this Act for a patent in

[1927. *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

respect of the same invention and shall be entitled to have such application under this Act dated and treated as having been made as of the date of the first-mentioned application for the purposes of determining the respective priorities of the said application under this Act and any other application, fixing the date to be borne by any patent granted pursuant to the said application under this Act, and determining whether the invention had been previously published in Saorstát Éireanna or in Great Britain.

(2) Any person or the legal representative or assignee of any person who has obtained between the 6th day of December, 1921 and the commencement of this Part of this Act protection for an invention in any British dominion (other than Great Britain and Northern Ireland) or foreign state to which the provisions of section 152 (which relates to international arrangements) of this Act are applied or declared to be applicable by order made under that section shall be entitled to apply under this Act within one year after the commencement of this Part of this Act for a patent in respect of the same invention and shall be entitled to have the said application under this Act dated and treated as having been made as of the date of the application for protection of the invention in such British dominion or foreign state for the purposes of determining the respective priorities of the said application under this Act and any other application, fixing the date to be borne by any patent granted pursuant to the said application under this Act, and determining whether the invention had been previously published in Saorstát Éireann or in Great Britain.

(3) Any person who applies for a patent under the provisions of this section may at any time before the grant of such patent (hereinafter called the first-mentioned patent) or within such time after such grant as may be allowed by the controller apply to the controller for the revocation of any patent (hereinafter called the second-mentioned patent) which by virtue of this Act is deemed to be a patent granted under this Act and bears date as of any date between the 6th day of December, 1921 and the commencement of this Part of this Act and is for the same invention as that in respect of which the first-mentioned patent is applied for on the ground that the date of the application for the second-mentioned patent was subsequent to the date of an application made by the applicant for the first-mentioned patent to the Minister for Economic Affairs of the late Provisional Government of Ireland or to the Minister for Industry and Commerce in Saorstát Éireann or in any such British dominion or foreign state as is mentioned in the foregoing sub-section for a patent or protection of the same invention and the controller may on such application for revocation revoke the second-mentioned patent on the ground aforesaid, but on no other ground.

(4) An appeal shall lie to the law officer from every decision of the controller on an application for revocation under the foregoing sub-section.

(5) The term limited in a patent granted pursuant to an application made under the provisions of sub-section (1) of this section for the duration of such patent shall be sixteen years from the date of the commencement of this Part of this Act, and for the purposes of the application of the Second Schedule to this Act to such patent the date of such patent shall be deemed to be the date of such commencement.

(6) No fees shall be payable under this Act on any patent granted pursuant to an application made under the provisions of sub-section (2) of this section in respect of anything done or any period of time expired before the commencement of this Part of this Act.

13.—(1) A provisional specification must commence with the title of the invention and must describe the nature of the invention. Specifications
of inventions.

(2) A complete specification must commence with the title of the invention and must particularly describe and ascertain the nature of the invention and the manner in which the same is to

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

be performed and must end with a distinct statement of the invention claimed.

(3) The controller may, whenever he considers it desirable so to do, require that suitable drawings shall be supplied with the specification (whether provisional or complete) or at any time before the acceptance thereof, and such drawings when supplied shall be deemed to form part of the specification.

(4) Whenever the invention in respect of which an application for a patent is made is a chemical invention, such typical samples and specimens as may be prescribed shall, if in any particular case the controller considers it desirable so to require, be furnished to the controller before the acceptance of the complete specification.

Proceedings upon
application

14.—(1) The controller shall refer every application for a patent to an examiner.

(2) If the examiner reports that the nature of the invention is not fairly described, or that the application, specification, or drawings have not been prepared in the prescribed manner, or that the title does not sufficiently indicate the subject-matter of the invention, the controller 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 controller so directs, bear date as from the time when the requirement is complied with.

(3) Where the controller refuses to accept an application or requires an amendment, the applicant may appeal from his decision to the law officer, who shall, if required, hear the applicant and the controller, and may make an order determining whether and subject to what conditions (if any) the application shall be accepted.

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

Provisional
protection.

15.—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 invention; and such protection from the consequences of use and publication is in this Act referred to as provisional protection.

Time for leaving
complete
specification.

16.—(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 the application: Provided that where an application is made for an extension of the time for leaving a complete specification, the controller shall, on payment of the prescribed fee, grant an extension of time to the extent applied for but not exceeding one month.

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

Comparison of
provisional and
complete
specifications.

17.—(1) Where a complete specification is left after a provisional specification, the controller shall refer both specifications to an examiner.

(2) If the examiner reports that the complete specification has not been prepared in the prescribed manner, the controller may refuse to accept the complete specification until it has been amended to his satisfaction.

(3) If the examiner reports that the invention particularly described in the complete specification is not substantially the same as that which is described in the provisional specification the controller may—

(a) refuse to accept the complete specification until it has been amended to his satisfaction; or

(b) (with the consent of the applicant) cancel the provisional specification and treat the application as having been

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

made on the date at which the complete specification was left, and the application shall have effect as if made on that date:

Provided that where the complete specification includes an invention not included in the provisional specification, the controller may allow the original application to proceed so far as the invention included both in the provisional and in the complete specification is concerned, and allow an application for the additional invention included in the complete specification to be made and treated as an application for that invention made on the date at which the complete specification was left.

(4) An appeal shall lie from the decision of the controller under this section to the law officer, who shall, if required, hear the applicant and the controller, and may make an order determining whether and subject to what conditions (if any) the complete specification shall be accepted.

18.—(1) If a complete specification is not accepted within the period of fifteen months from the date of the application or, where that period is extended under this section, before the expiration of the last extension of such period the application shall at the expiration of such period or such extension thereof (as the case may be) become void. Time for acceptance of complete specification.

(2) In any case in which an application for a British patent was pending when the complete specification was left, the controller may grant without the payment of any fee such extension or series of extensions of the said period of fifteen months as he shall think fit, but no such extension shall be granted unless the same is applied for before the expiration of the said period or the last previous extension thereof (as the case may be).

(3) In any case not coming within the foregoing sub-section the controller shall, on application therefor being made to him and the prescribed fee being paid before the expiration of the said period of fifteen months, grant such extension, not exceeding three months, of the said period of fifteen months as is so applied for.

(4) Whenever an appeal from a decision of the controller in relation to the complete specification is pending at the expiration of the said period of fifteen months or any extension thereof made under this section, the controller shall on application made to him therefor at any time grant without the payment of any fee an extension or further extension (as the case may be) of such period until the expiration of twenty-one days after the final decision of such appeal.

19.—(1) Every provisional specification must be accompanied by a statement as to whether the applicant has or has not applied for a British patent for the invention described in that specification and, if he has not so applied, a further statement as to whether he does or does not intend so to apply. Documents to accompany specifications.

(2) Every complete specification must be accompanied by a statement as to whether the applicant has or has not applied for a British patent for the invention claimed in the specification and, if he has so applied, a further statement as to whether such application has been granted, is still pending, or has been refused.

(3) A complete specification which is accompanied by a statement that a British patent for the invention has not been applied for shall be accompanied also by a statutory declaration made by a person who is registered either in the register of patent agents kept under this Act or in the register of patent agents kept in London or in the register of clerks kept under this Act that he has made a search and investigation in the Office or in the Patent Office in London or in some other place for the time being authorised in that behalf by rules made under this Act for the purpose of ascertaining whether the invention claimed in the complete specification has been wholly or in part claimed or described in any specification (other than a provisional specification not followed by a complete specification) published before the date of

1927. *Industrial and Commercial Property (Protection) Act, 1927.* 70. 16.

the application and left in the Patent Office in London pursuant to an application for a patent in the late United Kingdom made during the period commencing fifty years before the application under this Act and ending on the date of the commencement of this Part of this Act and that he is satisfied as a result of such search and investigation that the said invention had not been wholly or in part claimed or described in any such specification so published and left as aforesaid.

(4) A complete specification which is accompanied by a statement that a British patent for the invention claimed in the specification had been applied for and granted shall be accompanied by a certified copy of the complete specification on which such British patent was granted together with the prescribed proof of the acceptance of the last-mentioned specification by the Comptroller-General of the Patent Office in London.

(5) Whenever a complete specification is accompanied by a statement that a British patent for the invention has been applied for and that such application is still pending, the applicant shall, if the complete specification left in the Patent Office in London pursuant to the application for the British patent be accepted by the Comptroller-General of the Patent Office in London, lodge a certified copy of the last-mentioned complete specification together with the prescribed proof of the acceptance of such specification by the said Comptroller-General within one month after such acceptance.

(6) Subject to the provisions of the next following sub-section (when applicable) the controller shall not accept a provisional specification or a complete specification unless and until the provisions of the foregoing sub-sections of this section (so far as the same are applicable) have been complied with.

(7) Where—

(a) a complete specification contains a statement that a British patent for the invention has been applied for and that such application is still pending, and

(b) such application is refused,

the applicant shall give notice of such refusal to the controller and thereupon the controller shall refuse to accept the application unless and until the applicant proves—

(i) by the prescribed evidence that such refusal was made on grounds other than that the invention claimed in the complete specification has been wholly or in part claimed or described in any specification (other than a provisional specification) published before the date of the application and left in the Patent Office in London pursuant to an application for a patent in the late United Kingdom made during the period commencing fifty years before the application and ending on the date of the commencement of this Part of this Act, and

(ii) by such statutory declaration as is mentioned in sub-section (3) of this section, that the invention has not been wholly or in part claimed in any such specification as is mentioned in the foregoing paragraph (i).

(8) A refusal by the controller under the foregoing sub-section to accept an application shall be subject to appeal to the law officer.

Investigation of specifications published previous to application.

20.—(1) Where an application for a patent has been made and a complete specification has been left, the examiner shall, in addition to the other inquiries which he is directed to make by this Act, make a further investigation for the purpose of ascertaining whether the invention claimed in the specification has been wholly or in part claimed or described in any specification (other than a provisional specification not followed by a complete specification) published before the date of the application, and left pursuant to any application for a patent made in Saorstát Eireann under this Act.

(2) If on investigation it appears that the invention has been

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

wholly or in part claimed or described in any such specification, the applicant shall be informed thereof, and the applicant may, within such time as may be prescribed, amend his specification, and the amended specification shall be investigated in like manner as the original specification.

(3) If the controller is satisfied that no objection exists to the specification on the ground that the invention claimed therein has been wholly or in part claimed or described in a previous specification as before mentioned, he shall, in the absence of any other lawful ground of objection, accept the specification.

(4) If the controller is not so satisfied, he shall, unless the objection is removed by amending the specification to the satisfaction of the controller, determine whether a reference to any, and, if so, what prior specifications ought to be made in the specification by way of notice to the public:

Provided that the controller, if satisfied that the invention claimed has been wholly and specifically claimed in any specification to which the investigation has extended, may, in lieu of requiring references to be made in the applicant's specification as aforesaid, refuse to grant a patent.

(5) An appeal shall lie from the decision of the controller under this section to the law officer.

21.—(1) In addition to the investigation under the last preceding section, the examiner shall make an investigation for the purpose of ascertaining whether the invention claimed has been wholly or in part claimed in any specification published on or after the date of the application and deposited pursuant to a prior application.

Investigation of specifications published subsequent to application.

(2) Where on such further investigation it appears that the invention claimed has been wholly or in part claimed in any such specification, the applicant shall, whether or not his specification has been accepted or a patent granted to him, be afforded such facilities as may be prescribed for amending his specification, and in the event of his failing to do so the controller shall, in accordance with such procedure as may be prescribed, determine what reference, if any, to other specifications ought to be made in his specification by way of notice to the public.

(3) For the purposes of this section an application shall be deemed to be prior to another application if the patent applied for when granted would be of prior date to the patent granted pursuant to that other application.

(4) An appeal shall lie from the decision of the controller under this section to the law officer.

(5) The investigations and reports required by this and the last preceding section shall not be held in any way to guarantee the validity of any patent, and no liability shall be incurred by the Minister or the controller or any officer of the Minister or the controller by reason of or in connection with any such investigation or report or any proceedings consequent thereon.

22.—On the acceptance of the complete specification the controller shall advertise the acceptance: and the application and specifications, with the drawings (if any), shall be open to public inspection.

Advertisement on acceptance of complete specification.

23.—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 proceedings for infringement until a patent for the invention has been granted to him.

Effect of acceptance of complete specification.

24.—(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 Office of opposition to the grant of the patent on any of the following grounds:—

Opposition to grant of patent.

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

- (a) that the applicant obtained the invention from the opponent, or from a person of whom he is the legal representative; or
- (b) that the invention was published in any complete specification, or in any provisional specification followed by a complete specification, deposited in the Patent Office in London pursuant to an application made in that Office within a period commencing fifty years before the date of the application for the patent the grant of which is being opposed and ending on the date of the commencement of this Part of this Act; or
- (c) that the invention was before the date of the application published in any complete specification, or in any provisional specification followed by a complete specification, deposited in the Office pursuant to an application made under this Act or has been made available to the public by publication before the date of the application in any document (other than any such specification as is mentioned in this clause or any British specification published before the commencement of this Part of this Act) published in Saorstát Eireann or published prior to the establishment of Saorstát Eireann in the late United Kingdom; or
- (d) that the invention has been claimed in any complete specification for a patent in Saorstát Eireann which though not published at the date of the application for the patent the grant of which is opposed was deposited pursuant to an application for a patent which is or will be of prior date to such patent; or
- (e) that the nature of the invention or the manner in which it is to be performed is not sufficiently or fairly described and ascertained in the complete specification; or
- (f) 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; or
- (g) that in the case of an application for a patent made under the provisions of sub-section (1) or sub-section (2) of section 12 (which relates to applications for patents in certain cases) of this Act, the invention claimed or described in the complete specification is not the same invention as the invention which was the subject of the application to the Minister for Economic Affairs of the late Provisional Government of Ireland or the Minister for Industry and Commerce of Saorstát Eireann or was the subject of the protection in the British dominion or foreign state (as the case may be) or
- (h) that in the case of an application under the provisions of this Act relating to foreign and British dominion patents the specification describes or claims an invention other than that for which protection has been applied for in the foreign state or British dominion and that such other invention forms the subject of an application made by the opponent in the interval between the leaving of the application in the foreign state or British dominion and the leaving of the application in Saorstát Eireann.

but on no other ground.

(2) Where such notice is given the controller shall give notice of the opposition to the applicant, and shall, on the expiration of those two months, after hearing the applicant and the opponent, if desirous of being heard, decide the case.

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

(3) The decision of the controller shall be subject to appeal to the law officer, who shall, if required, hear the applicant and the opponent, if the opponent is, in his opinion, a person entitled to be heard in opposition to the grant of the patent, and shall decide the case; and 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 Minister for Finance may determine.

25.—(1) If there is no opposition, or, in case of opposition, if the determination is in favour of the grant of a patent, a patent shall, on payment of the prescribed fee, be granted to the applicant, or in the case of a joint application to the applicants jointly, and the controller shall cause the patent to be sealed with his official seal: Grant and sealing of patent.

Provided that where—

- (a) an applicant has agreed in writing to assign a patent when granted to another party or a joint applicant and refuses to proceed with the application; or
- (b) disputes arise between joint applicants as to proceeding with an application:

the controller on proof of such agreement to his satisfaction, or if satisfied that one or more of such joint applicants ought to be allowed to proceed alone, may allow such other party or joint applicant to proceed with the application, and may grant a patent to him, so however that all parties interested shall be entitled to be heard before the controller, and an appeal shall lie from the decision of the controller under this proviso to the law officer.

(2) A patent shall be sealed as soon as may be, and not after the expiration of eighteen months from the date of application: Provided that—

- (a) where the controller has allowed an extension of the time within which a complete specification may be left or accepted, a further extension of four months after the said eighteen months shall be allowed for the sealing of the patent;
- (b) 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 or the controller as the case may be may direct;
- (c) where the patent is granted to the legal representative of an applicant who has died before the expiration of the time which would otherwise be allowed for sealing the patent, the patent may be sealed at any time within twelve months after the date of his death;
- (d) where an application for a British patent was pending when the complete specification was deposited, the controller may, without the payment of any fees, extend by such period or periods as he thinks fit the time allowed by this section for sealing the patent;
- (e) where for any reason a patent cannot be sealed within the period allowed by this section, that period may, on payment of the prescribed fee and on compliance with the prescribed conditions, be extended to such an extent as may be prescribed.

26.—Where an application for a patent has been abandoned, or become void, the specifications and drawings (if any) accompanying or left in connection with such application, shall not, save as otherwise expressly provided by this Act, at any time be open to public inspection or be published by the controller. Abandoned or void application.

27.—Except as otherwise expressly provided by this Act, a patent shall be dated and sealed as of the date of the application: Date of patent. Provided that no proceedings shall be taken in respect of an infringement committed before the acceptance of the complete specification.

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

Effect and form
of patent.

28.—(1) Subject to the provisions of this Act every patent granted under this Act and sealed with the official seal of the controller shall operate and have effect and shall be expressed to operate and have effect—

- (a) to confer on the person to whom the same is granted his executors, administrators and assigns (in this sub-section collectively referred to as the grantee) the full, sole, and exclusive right, power and authority by himself, his agents or licensees at all times so long as the patent remains in force to make, use, exercise, and vend in Saorstát Éireann the invention in respect of which the patent is granted;
- (b) to confer on the grantee the sole right to have and enjoy the whole profit and advantage from time to time accruing by reason of the said invention during such period as the patent remains in force;
- (c) to prohibit all persons whatsoever in Saorstát Éireann while the patent remains in force from making use of or putting in practice the said invention or any part thereof, or in anywise imitating the same, or in anywise representing or pretending themselves to be the inventors of the said invention or of the said invention with any addition thereto or subtraction therefrom without the consent, licence or agreement of the grantee in writing under his hand and seal;
- (d) to make all persons who, while the patent remains in force, shall, in Saorstát Éireann, in anywise infringe any right, power, or authority expressed in the patent to be thereby conferred on the grantee or do any act, matter, or thing the doing of which is expressed in the patent to be thereby prohibited, answerable according to law to the grantee for such infringement or the doing of such act, matter, or thing.

(2) Every patent shall be in the prescribed form and shall be granted for one invention only, but the specification may contain more than one claim; and 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 has been granted for more than one invention.

Effect of
existing British
patents.

29.—(1) Every patent granted by the Patent Office in London before the commencement of this Part of this Act shall have and be deemed always to have had in Saorstát Éireann during the period between the 6th day of December, 1921, or the date of such patent (whichever is the later) and the commencement of this Part of this Act the same force and effect as such patent had during that period in Great Britain, but from and after the commencement of this Part of this Act every such patent shall (notwithstanding that it bears a date prior to the passing of this Act or to the commencement of this Part of this Act) be deemed to be a patent granted under this Act as of the date such patent actually bears and shall have immediately on the commencement of this Part of this Act the same force and effect in Saorstát Éireann as such patent had in Great Britain immediately before such commencement and shall thenceforth have and be subject to all privileges, liabilities and incidents conferred or imposed by this Act or otherwise by law on patents granted under this Act.

(2) No fees shall be payable under this Act on any such patent as is mentioned in the foregoing sub-section in respect of anything done or any period of time expired before the commencement of this Part of this Act, but the like fees shall be payable on every such patent in respect of everything done and every period of time expiring after the commencement of this Part of this Act as would have been payable if such patent had been a patent granted under this Act on the date actually borne by such patent notwithstanding that such date is prior to the passing of this Act or to the commencement of this Part of this Act.

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

(3) Every patent granted by the Patent Office in London after the commencement of this Part of this Act and bearing date as of a day prior to such commencement shall (notwithstanding that it bears a date prior to the passing of this Act or to the commencement of this Part of this Act) be deemed to be a patent granted under this Act as of the date such patent actually bears and accordingly every such patent shall have the like force and effect in Saorstát Éireann as it would have had if it had been granted under this Act as of the date it actually bears but with and subject to all privileges, liabilities, and incidents conferred or imposed by this Act on patents granted under this Act.

(4) No fees shall be payable under this Act on any such patent as is mentioned in the next foregoing sub-section in respect of anything done or any period of time expired before the actual grant of the patent, but the like fees shall be payable on every such patent in respect of everything done and every period of time expiring after the actual grant of the patent as would have been payable on such patent if such patent had been a patent granted under this Act on the date borne by such patent notwithstanding that such date is prior to the passing of this Act or to the commencement of this Part of this Act.

(5) In every case in which a complete specification has been accepted by the Comptroller-General of the Patent Office in London before the commencement of this Part of this Act (whether before or after the passing of this Act) and the patent pursuant thereto has not been sealed and the time for such sealing has not expired at the commencement of this Part of this Act, the applicant for such patent shall during the time between the date of such acceptance or the 31st day of December, 1921 (whichever date is the later) and the sealing of the patent or the expiration of the time for sealing have and be deemed always to have had the like privileges and rights in Saorstát Éireann as if a patent for the invention had been granted to him under this Act on the date of the application to the Patent Office in London for such patent notwithstanding that such last-mentioned date is prior to the passing of this Act or to the commencement of this Part of this Act, but the said applicant shall not be entitled to institute in Saorstát Éireann any proceedings for infringement until a patent which by virtue of this section is deemed to be a patent granted under this Act has been granted to him for the invention.

(6) No fees shall be receivable in the Office in respect of any such patent as is mentioned in this section unless or until certified copies of the entries in the British register relating to the patent have been furnished to the controller for registration and a copy of the complete specification on which the British patent was granted has been lodged with the controller, but the failure to lodge such copies shall not relieve from the liability to pay any fees or from the consequences of the non-payment thereof.

(7) The holder of a patent which by virtue of this section is deemed to be a patent granted under this Act shall not be entitled to apply for or be granted under this Act any other patent for the invention for which such first-mentioned patent was granted.

30.—(1) 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. **Fraudulent applications for patents.**

(2) Where a patent has been revoked by the court on the ground that it has been obtained in fraud of the true and first inventor, or where the grant has been refused or revoked on the ground that the applicant or patentee obtained the invention from another person, the controller may, on the application of the true inventor made in accordance with the provisions of this Act, grant to him a patent for the whole or any part of the invention in lieu of and bearing the same date as the patent so revoked, or as would have been borne by the patent if the grant thereof had not been refused:

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

Provided that no action shall be brought for any infringement of the patent so granted committed before the actual date when such patent was granted.

**Single patent
for cognate
inventions.**

31.—(1) Where the same applicant has put in two or more provisional specifications for inventions which are cognate or modifications one of the other, and has obtained thereby concurrent provisional protection for the same, and the controller is of opinion that the whole of such inventions are such as to constitute a single invention and may properly be included in one patent, he may accept one complete specification in respect of the whole of such applications and grant a single patent thereon.

(2) Such patent shall bear the date of the earliest of such applications, but in considering the validity of the same, and in determining other questions under this Act, the court or the controller, as the case may be, shall have regard to the respective dates of the provisional specifications relating to the several matters described therein.

Term of patent.

32.—The term limited in every patent for the duration thereof shall, save as otherwise expressly provided by this Act, be sixteen years from its date.

**Effect of
failure to
pay fees.**

33.—(1) A patent shall, notwithstanding anything therein or in this Act, cease if and whenever the patentee fails to pay a prescribed fee in relation thereto within the prescribed time or, where that time is extended under this section, within such extension of that time.

(2) The controller may on the application at any time of the patentee under a British patent which by virtue of this Act is deemed to have been granted under this Act and without the payment of any additional fee extend for any period not exceeding six months from the commencement of this Part of this Act the prescribed time for the payment of the first fee which becomes payable under this Act in respect of such British patent.

(3) In any case not coming within the foregoing sub-section the controller shall on the application at any time of the patentee and payment by him of such additional fee as shall be prescribed extend for such period not exceeding three months as is so applied for the prescribed time for the payment of any prescribed fee in relation to any patent.

(4) If any proceeding is taken in respect of an infringement of the patent committed after a failure to pay any fee within the prescribed time, and before any enlargement thereof, the court before which the proceeding is taken may, if it thinks fit, refuse to award any damages in respect of such infringement.

**Extension of
term of patent.**

34.—(1) A patentee may, after advertising in manner provided by rules of the court his intention to do so, present a petition to the court 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:

Provided that the court may in its discretion extend such period within which such a petition may be presented.

(2) Any person may give notice to the court of objection to the extension.

(3) On the hearing of any petition under this section the patentee and any person who has given such notice of objection shall be made parties to the proceeding, and the controller shall be entitled to appear and be heard, and shall appear if so directed by the court.

(4) The court, in considering its decision, shall 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.

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

(5) If it appears to the court that the patentee has been inadequately remunerated by his patent, the court may by order extend the term of the patent for a further term not exceeding five years, or, in exceptional cases, ten years, or may order the grant of a new patent for such term as may be specified in the order and containing any restriction, conditions, and provisions the court may think fit.

35.—(1) When a patent for an invention has been applied for or granted under this Act or a patent is by virtue of this Act deemed to be a patent granted under this Act, and the applicant or the patentee, as the case may be, applies for a further patent in respect of any improvement in or modification of the invention, he may, if he thinks fit, in his application for the further patent, request that the term limited in that patent for the duration thereof be the same as that of the original patent or so much of that term as is unexpired. Patents of addition.

(2) Where an application containing such a request is made, a patent (hereinafter referred to as a patent of addition) may be granted for such term as aforesaid.

(3) A patent of addition shall remain in force so long as the patent for the original invention remains in force, but no longer, and in respect of a patent of addition no fees shall be payable for renewal:

Provided that, if the patent for the original invention is revoked, then the patent of addition shall, if the court or controller so orders, become an independent patent, and the fees payable, and the dates when they become payable, shall be determined by its date, but its duration shall not exceed the unexpired term of the patent for the original invention.

(4) The grant of a patent of addition shall be conclusive evidence that the invention is a proper subject for a patent of addition, and the validity of the patent shall not be questioned on the ground that the invention ought to have been the subject of an independent patent.

36.—(1) Where any patent has become void owing to the failure of the patentee to pay any prescribed fee within the prescribed time, the patentee may apply to the controller in the prescribed manner for an order for the restoration of the patent. Restoration of lapsed patents.

(2) Every such application shall contain a statement of the circumstances which have led to the omission of the payment of the prescribed fee.

(3) If it appears from such statement that the omission was unintentional and that no undue delay has occurred in the making of the application, the controller shall advertise the application in the prescribed manner, and within such time as may be prescribed any person may give notice of opposition at the Office.

(4) Where such notice is given the controller shall notify the applicant thereof.

(5) After the expiration of the prescribed period the controller shall hear the case and issue an order either restoring the patent or dismissing the application: Provided that in every order under this section restoring a patent such provisions as may be prescribed shall be inserted for the protection of persons who may have availed themselves of the subject-matter of the patent after the patent had been announced as void in the Journal.

(6) An appeal shall lie from the decision of the controller under this section to the court.

37.—(1) An applicant or a patentee may at any time, by request in writing left at the Office, seek leave to amend his specification, including drawings forming part thereof, by way of disclaimer, correction, or explanation, stating the nature of, and the reasons for, the proposed amendment. Amendment of specification by controller.

[1927. *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

(2) The request and the nature of the 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 Office of opposition to the amendment.

(3) Where such a notice is given the controller shall give notice of the opposition to the person making the request, and shall hear and decide the case.

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

(5) The decision of the controller in either case shall be subject to an appeal to the law officer, who shall, if required, hear the person making the request to amend and, where notice of opposition has been given, the person giving that notice, if he is, in the opinion of the law officer, entitled to be heard in opposition to the request, and, where there is no opposition, the controller, and may make an order determining whether and subject to what conditions (if any) the amendment ought to be allowed.

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

(7) 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 be advertised in the prescribed manner, and shall in all courts and for all purposes be deemed to form part of the specification:

Provided that a court shall be entitled in construing a specification as amended to refer to the specification as accepted and published.

(8) This section shall not apply when and so long as any action for infringement or proceeding before the court for the revocation of a patent is pending.

Amendment of
specification by
the court.

38.—In any action for infringement of a patent or proceedings before a court for the revocation of a patent, the court may by order allow the patentee to amend his specification by way of disclaimer, correction, or explanation in such manner, and subject to such terms as to costs, advertisements, or otherwise, as the court may think fit:

Provided that no amendment shall be so allowed that would make the specification, as amended, describe an invention substantially larger than, or substantially different from, the invention described by the specification as it stood before the amendment, and where an application for such an order is made to the court notice of the application shall be given to the controller, and the controller shall have the right to appear and be heard, and shall appear if so directed by the court.

Restriction on
damages where
specification
amended.

39.—Where an amendment of a specification 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 date of the decision allowing the amendment, unless the patentee establishes to the satisfaction of the court that his original description was framed in good faith and with reasonable skill and knowledge.

Provisions as to
patents indorsed
"licences of
right."

40.—(1) At any time after the sealing of a patent the controller shall, if the patentee so requests, cause the patent to be indorsed with the words "licences of right," and a corresponding entry to be made in the register, and thereupon—

(a) any person shall at any time thereafter be entitled as of right to a licence under the patent upon such terms as, in default of agreement, may be settled by the controller on the application of either the patentee or the applicant:

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act. 1927.

Provided that any licence the terms of which are settled by agreement shall be deemed, unless otherwise expressly provided, to include the terms and conditions specified in paragraphs (c) and (d) of this subsection as if they had been imposed by the controller thereunder in like manner as if the terms had been settled by the controller;

- (b) in settling the terms of any such licence the controller shall be guided by the following considerations—

(i) he shall, on the one hand, endeavour to secure the widest possible user of the invention in Saorstát Eireann consistent with the patentee deriving a reasonable advantage from his patent rights,

(ii) he shall, on the other hand, endeavour to secure to the patentee the maximum advantage consistent with the invention being worked by the licensee at a reasonable profit in Saorstát Eireann.

(iii) he shall also endeavour to secure equality of advantage among the several licensees, and for this purpose may, on due cause being shown, reduce the royalties or other payments accruing to the patentee under any licence previously granted:

Provided that, in considering the question of equality of advantage, the controller shall take into account any work done or outlay incurred by any previous licensee with a view to testing the commercial value of the invention or to securing the working thereof on a commercial scale in Saorstát Eireann:

- (c) any such licence the terms of which are settled by the controller may be so framed as to preclude the licensee from importing into Saorstát Eireann any goods the importation of which, if made by persons other than the patentee or those claiming under him, would be an infringement of the patent, and in such a case the patentee and all licensees under the patent shall be deemed to have mutually covenanted against such importation;
- (d) every such licensee shall be entitled to call upon a patentee to take proceedings to prevent the infringement of the patent, and if the patentee refuses, or neglects to do so within two months after being so called upon, the licensee may institute proceedings for the infringement in his own name as though he were patentee, making the patentee a defendant. A patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings. Service on him may be effected by leaving the writ at his address for service given on the register;
- (e) if in any action for infringement of a patent so indorsed the infringing defendant is ready and willing to take a licence upon terms to be settled by the controller, no injunction against him shall be awarded, and the amount recoverable against him by way of damages (if any) shall not exceed double the amount which would have been recoverable against him as licensee if the licence had been dated prior to the earliest infringement:
- Provided that this paragraph shall not apply where the infringement consists of the importation of infringing goods;
- (f) the renewal fees payable by the patentee of a patent so indorsed shall, as from the date of the indorsement, be one moiety only of the fees which would otherwise have been payable;

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

(2) The controller shall, before acting on any request to indorse a patent made by the patentee under this section, advertise such request in the *Journal*, and shall satisfy himself that the patentee is not precluded by contract from making such request, and for that purpose shall require from the patentee such evidence, by statutory declaration or otherwise, as he may deem necessary:

Provided that a patentee shall not be deemed to be so precluded by reason only of his having granted a licence under the patent where the licence does not limit his right to grant other licences.

(3) Any person, alleging that a request under this section has been made contrary to some contract in which he is interested, may apply to the controller within the prescribed time and in the prescribed manner, and the controller, if satisfied of the truth of such allegation, shall refuse to indorse the patent pursuant to the request, or shall cause the indorsement, if already made, to be cancelled.

Any order under this sub-section shall be subject to appeal to the court.

(4) All indorsements of patents under this section shall be entered on the register of patents and shall be published in the *Journal* and in such other manner as the controller may deem desirable for the purpose of bringing the invention to the notice of manufacturers.

(5) If at any time it appears that in the case of a patent so indorsed there is no existing licence the controller may, if he thinks fit, on the application of the patentee and on payment by him of the unpaid moiety of all renewal fees which have become due since the indorsement, after due notice cancel the indorsement, and in that case the patentee's rights and liabilities shall be the same as if no such indorsement had been made.

**Revocation of
patents by
court.**

41.—(1) Revocation of a patent may be obtained on petition to the court.

(2) Every ground on which a patent might formerly at common law have been repealed by *scire facias* shall be available by way of defence to an action of infringement and shall also be a ground of revocation under this section.

(3) A petition for revocation of a patent may be presented—

(a) by the law officer or any person authorised by him;
or

(b) by any person alleging—

(i) that the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims, or

(ii) that he, or any person under or through whom he claims, was the true inventor of any invention included in the patent, or

(iii) 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 Saorstát Éireann, before the date of the patent, anything claimed by the patentee as his invention.

**Revocation of
patents by
controller.**

42.—(1) Any person who would have been entitled to oppose the grant of a patent, or is the successor in interest of a person who was so entitled, may, within one year from the grant of the patent, apply to the controller for an order revoking the patent on any one or more of the grounds on which the grant of the patent might have been opposed:

Provided that when an action for infringement or proceedings for the revocation of the patent are pending in any court, an application under this section shall not be made except with the leave of the court.

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

(2) The controller shall give notice of the application to the patentee, and after hearing the parties, if desirous of being heard, may make an order revoking the patent or requiring the specification relating thereto to be amended by disclaimer, correction, or explanation, or dismissing the application; but the controller shall not make an order revoking the patent unless the circumstances are such as would have justified him in refusing to grant the patent had the proceedings been proceedings in an opposition to the grant of a patent.

(3) A patentee may at any time by giving notice in the prescribed manner to the controller offer to surrender his patent, and the controller may, if after giving notice of the offer and hearing all parties who desire to be heard he thinks fit, accept the offer, and thereupon make an order for the revocation of the patent.

(4) Any decision of the controller under this section shall be subject to appeal to the court.

43.—(1) Any person interested may at any time apply to the controller alleging in the case of any patent that there has been an abuse of the monopoly rights thereunder and asking for relief under this section. Prevention of
abuse of
monopoly rights.

(2) The monopoly rights under a patent shall be deemed to have been abused in any of the following circumstances:—

(a) if at any time after the expiration of three years, in the case of a British patent which is by virtue of this Act deemed to have been granted under this Act, from the commencement of this Part of this Act, or in the case of any other patent, from the date of the application for the patent, the patented invention (being one capable of being worked in Saorstát Eireann) is not being worked within Saorstát Eireann on a commercial scale, and no satisfactory reason can be given for such non-working:

Provided that, if an application is presented to the controller on this ground, and the controller is of opinion that the time which has elapsed since the date of the patent has by reason of the nature of the invention or for any other cause been insufficient to enable the invention to be worked within Saorstát Eireann on a commercial scale, the controller may adjourn the application for such period as will in his opinion be sufficient for that purpose;

(b) if the working of the invention within Saorstát Eireann on a commercial scale is being prevented or hindered by the importation from abroad of the patented article by the patentee or persons claiming under him, or by persons directly or indirectly purchasing from him, or by other persons against whom the patentee is not taking or has not taken any proceedings for infringement;

(c) if the demand for the patented article in Saorstát Eireann is not being met to an adequate extent and on reasonable terms, regard being had amongst other circumstances, to the potential demand that might be evoked if the patented article were sold at a lower price;

(d) if the price at which the patented article is sold is, having regard to all the circumstances, unreasonably high in comparison with that at which the article is sold in other countries;

(e) if, by reason of the refusal of the patentee to grant a licence or licences upon reasonable terms, the trade or industry of Saorstát Eireann or the trade of any person or class of persons trading in Saorstát Eireann, or the establishment of any new trade or industry in Saorstát Eireann is prejudiced, and it is in the public interest that a licence or licences should be granted;

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

- (f) if any trade or industry in Saorstát Eireann or any person or class of persons engaged therein, is unfairly prejudiced by the conditions attached by the patentee: whether before or after the passing of this Act, to the purchase, hire, licence, or use of the patented article, or to the using or working of the patented process:

Provided that, for the purpose of determining whether there has been any abuse of the monopoly rights under a patent, it shall be taken that patents for new inventions are granted not only to encourage invention but to secure that new inventions shall so far as possible be worked on a commercial scale in Saorstát Eireann without undue delay.

(3) On being satisfied that a case of abuse of the monopoly rights under a patent has been established, the controller may exercise any of the following powers as he may deem expedient in the circumstances:—

- (a) he may order the patent to be indorsed with the words "licences of right" and thereupon the same rules shall apply as are provided in this Act in respect of patents so indorsed, and an exercise by the controller of this power shall entitle every existing licensee to apply to the controller for an order entitling him to surrender his licence in exchange for a licence to be settled by the controller in like manner as if the patent had been so indorsed at the request of the patentee, and the controller may make such order; and an order that a patent be so indorsed may be made notwithstanding that there may be an agreement subsisting which would have precluded the indorsement of the patent at the request of the patentee;
- (b) he may order the grant to the applicant of a licence on such terms as the controller may think expedient, including a term precluding the licensee from importing into Saorstát Eireann any goods the importation of which, if made by persons other than the patentee or persons claiming under him, would be an infringement of the patent, and in such case the patentee and all licensees for the time being shall be deemed to have mutually covenanted against such importation. A licensee under this paragraph shall be entitled to call upon the patentee to take proceedings to prevent infringement of the patent, and if the patentee refuses, or neglects to do so within two months after being so called upon, the licensee may institute proceedings for infringement in his own name as though he were the patentee, making the patentee a defendant. A patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings. Service on him may be effected by leaving the writ at his address for service given on the register. In settling the terms of a licence under this paragraph the controller shall be guided as far as may be by the same considerations as are specified in this Act for his guidance in settling licences under patents indorsed "licences of right";
- (c) if the controller is satisfied that the invention is not being worked on a commercial scale within Saorstát Eireann, and is such that it cannot be so worked without the expenditure of capital for the raising of which it will be necessary to rely on the patent monopoly, he may, unless the patentee or those claiming under him will undertake to find such capital, order the grant to the applicant, or any other person, or to the applicant and any other person or persons jointly, if able and willing to provide such capital, of an exclusive licence on such terms as the controller may think just, but subject as hereinafter provided;

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

- (d) if the controller is satisfied that the objects of this section cannot be attained by the exercise of any of the foregoing powers, he may order the patent to be revoked, either forthwith or after such reasonable interval as may be specified in the order, unless in the meantime such conditions as may be prescribed in the order with a view to attaining the objects of this section are fulfilled, and the controller may, on reasonable cause shown in any case, by subsequent order extend the interval so specified:

Provided that the controller shall make no order for revocation which is at variance with any treaty, convention, arrangement, or engagement with any foreign country or British dominion made by or binding on Saorstát Éireann;

- (e) if the controller is of opinion that the objects of this section will be best attained by making no order under the above provisions of this section, he may make an order refusing the application and dispose of any question as to costs thereon as he thinks just.

(4) In settling the terms of any such exclusive licence as is provided in paragraph (c) of the last preceding sub-section, due regard shall be had to the risks undertaken by the licensee in providing the capital and working the invention, but, subject thereto, the licence shall be so framed as—

- (a) to secure to the patentee the maximum royalty compatible with the licensee working the invention within Saorstát Éireann on a commercial scale and at a reasonable profit;
- (b) to guarantee to the patentee a minimum yearly sum by way of royalty, if and so far as it is reasonable so to do, having regard to the capital requisite for the proper working of the invention and all the circumstances of the case;

and, in addition to any other powers expressed in the licence or order, the licence and the order granting the licence shall be made revocable at the discretion of the controller if the licensee fails to expend the amount specified in the licence as being the amount which he is able and willing to provide for the purpose of working the invention on a commercial scale within Saorstát Éireann, or if he fails so to work the invention within the time specified in the order.

(5) In deciding to whom such an exclusive licence is to be granted the controller shall, unless good reason is shown to the contrary, prefer an existing licensee to a person having no registered interest in the patent.

(6) The order granting an exclusive licence under this section shall operate to take away from the patentee any right which he may have as patentee to work or use the invention and to revoke all existing licences, unless otherwise provided in the order, but on granting an exclusive licence the controller may, if he thinks it fair and equitable, make it a condition that the licensee shall give proper compensation to be fixed by the controller for any money or labour expended by the patentee or any existing licensee in developing or exploiting the invention.

(7) Every application presented to the controller under this section must set out fully the nature of the applicant's interest and the facts upon which the applicant bases his case and the relief which he seeks. The application must be accompanied by statutory declarations verifying the applicant's interest and the facts set out in the application.

(8) The controller shall consider the matters alleged in the application and declarations, and, if satisfied that the applicant has a *bona fide* interest and that a *prima facie* case for relief has been made out, he shall direct the applicant to serve copies of the application and declarations upon the patentee and upon any other persons appearing from the register to be interested in the patent, and shall advertise the application in the *Journal*.

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

(9) If the patentee or any person is desirous of opposing the granting of any relief under this section, he shall, within such time as may be prescribed or within such extended time as the controller may on application further allow, deliver to the controller a counter statement verified by a statutory declaration fully setting out the grounds on which the application is to be opposed.

(10) The controller shall consider the counter statement and declarations in support thereof and may thereupon dismiss the application if satisfied that the allegations in the application have been adequately answered, unless any of the parties demands a hearing or unless the controller himself appoints a hearing. In any case the controller may require the attendance before him of any of the declarants to be cross-examined or further examined upon matters relevant to the issues raised in the application and counter statement, and he may, subject to due precautions against disclosure of information to rivals in trade, require the production before him of books and documents relating to the matter in issue.

(11) All orders of the controller under this section shall be subject to appeal to the court, and on any such appeal the law officer or such other counsel as he may appoint shall be entitled to appear and be heard.

(12) In any case where the controller does not dismiss an application as hereinbefore provided, and—

(a) if the parties interested consent: or

(b) if the proceedings require any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the controller conveniently be made before him:

the controller may at any time order the whole proceedings or any question or issue of fact arising thereunder to be referred to an arbitrator agreed on by the parties, or in default of agreement appointed by the controller, and, where the whole proceedings are so referred, the award of such arbitrator shall, if all the parties consent, be final, but otherwise shall be subject to the same appeal as the decision of the controller under this section, and, where a question or issue of fact is so referred, the arbitrator shall report his findings to the controller.

(13) For the purposes of this section, the expression "patented article" includes articles made by a patented process.

**Operation of
order for grant
of licence.**

44.—Any order for the grant of a licence under this Act shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a licence executed by the patentee and all other necessary parties.

**Register of
patents.**

45.—(1) There shall be kept at the Office a book called the register of patents, wherein shall be entered the names and addresses of grantees of patents granted under this Act, notifications of assignments and of transmissions of such patents, of licences under such patents, and of amendments, extensions, and revocations of such patents, and such other matters affecting the validity or proprietorship of such patents as may be prescribed.

(2) The register of patents shall be *prima facie* evidence of all matters by this Act directed or authorised to be inserted therein.

(3) Copies of deeds, licences, and any other documents affecting the proprietorship in any patent or in any licence thereunder, must be supplied to the controller in the prescribed manner for filing in the Office.

(4) Certified copies of all entries in the British register relating to British patents which by virtue of this Act are deemed to be patents granted under this Act shall be furnished to the controller and shall be entered in the register of patents under this

“1927.” *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

Act, but it shall not be obligatory to make such entries in the register until the first occasion on which certified copies of such entries in the British register are required by or under this Act to be furnished to the controller.

46.—(1) Any inventor or patentee may (either for or without valuable consideration) assign to a Minister on behalf of the state all the benefit of an invention and of any patent obtained or to be obtained for the invention.

Inventor or patentee may assign benefit to Minister.

(2) In this section the word “Minister” means a Minister head of a Department of State established under the Ministers and Secretaries Act, 1924 (No. 16 of 1924).

47.—(1) The inventor of any improvement in instruments or munitions of war may (either for or without valuable consideration) assign to the Minister for Defence on behalf of the State all the benefit of the invention and of any patent obtained or to be obtained for the invention.

Inventions relating to instruments or munitions of war.

(2) The assignment shall effectually vest the benefit of the invention and patent in the Minister for Defence on behalf of the State, 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 Minister for Defence.

(3) Where any such assignment as aforesaid has been made, the Minister for Defence may at any time before the publication of the complete specification certify to the controller 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 Minister for Defence so certifies the application and specifications, with the drawings (if any) and any amendment of the complete specification, and any copies of such documents and drawings shall, instead of being left in the ordinary manner at the Office, be delivered to the controller in a packet sealed by authority of the Minister for Defence.

(5) The packet aforesaid shall, until the expiration of the term during which a patent for the invention may be in force, be kept sealed by the controller and shall not be opened save under the authority of an order of the Minister for Defence or of the law officer.

(6) The sealed packet aforesaid shall be delivered at any time during the continuance of the patent to any person authorised by the Minister for Defence to receive it, and shall, if returned to the controller, be again kept sealed by him.

(7) On the expiration of the term of the patent, the sealed packet shall be delivered to the Minister for Defence.

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

(9) No proceeding by petition or otherwise shall lie for revocation of a patent granted for an invention in relation to which such a certificate as aforesaid has been given by the Minister for Defence.

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

(11) The Minister for Defence may at any time waive the benefit of this section with respect to any particular invention, and thereupon the specifications, documents, and drawings relating to that invention shall thenceforth be kept and dealt with in the ordinary way.

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

(12) The communication of any invention for any improvement in instruments or munitions of war to the Minister for Defence or to any person or persons authorised by the Minister for Defence 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.

(13) Rules may be made under this Act by the Minister, after consultation with the Minister for Defence, for the purpose of ensuring secrecy with respect to patents to which this section applies, and those rules may modify any of the provisions of this Act in their application to such patents as aforesaid so far as may appear necessary for the purpose aforesaid.

Hearing with
assessor.

48.—(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 all parties to the proceedings, call in the aid of an assessor specially qualified, and try the case wholly or partially with his assistance, in which event the action shall be tried without a jury unless the court otherwise directs.

(2) The Supreme Court may, if it thinks fit, in any proceeding before them 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 Supreme Court, as the case may be, and be paid as part of the expenses of the execution of this Act.

Counterclaim for
revocation of
patent.

49.—A defendant in an action for infringement of a patent, if entitled to present a petition to the court for the revocation of the patent, may, without presenting such a petition, apply in accordance with the rules of the court by way of counterclaim in the action for the revocation of the patent.

Power of court
to grant relief
in respect of
particular
claims.

50.—(1) Notwithstanding anything to the contrary appearing in section 39 (which relates to restriction on damages where specification amended) of this Act, if the court in any action for infringement of a patent finds that any one or more of the claims in the specification in respect of which infringement is alleged are valid, it shall, subject to its discretion as to costs and as to the date from which damages should be reckoned and subject to such terms as to amendment as it may deem desirable, grant relief in respect of any such claims which are infringed without regard to the invalidity of any other claim in the specification.

(2) In exercising the discretion mentioned in the foregoing sub-section, the court may take into consideration the conduct of the parties in inserting the invalid claims in the specification or permitting such claims to remain therein.

Exemption of
innocent
infringer from
liability for
damages.

51.—A patentee shall not be entitled to recover any damages in respect of any infringement of a patent from any defendant who proves that at the date of the infringement he was not aware, nor had reasonable means of making himself aware, of the existence of the patent, and the marking of an article with the word "patent," "patented," or any word or words expressing or implying that a patent has been obtained for the article, stamped, engraved, impressed on, or otherwise applied to the article, shall not be deemed to constitute notice of the existence of the patent unless the word or words are accompanied by the year and number of the patent:

Provided that nothing in this section shall affect any proceedings for an injunction.

Order for
injunction or
inspection.

52.—In an action for infringement of a patent, the plaintiff shall be entitled to relief by way of injunction and damages but not to an account of profits, but subject as aforesaid the court may on the application of either party make such order for an injunction or inspection, and impose such terms and give such directions respecting the same and the proceedings thereon as the court may see fit.

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

53.—Where a patent is granted to two or more persons jointly, they shall, unless otherwise specified in the patent, be treated for the purpose of the devolution of the legal interests therein as joint tenants, but, subject to any contract to the contrary, each of such persons shall be entitled to use the invention for his own profit without accounting to the others, but shall not be entitled to grant a licence without their consent, and, if any such person dies, his beneficial interest in the patent shall devolve on his personal representatives as part of his personal estate.

Grant of patent
to two or more
persons.

54.—(1) It shall not be lawful in any contract in relation to the sale or lease of, or licence to use or work, any article or process protected by a patent to insert a condition the effect of which will be—

Avoidance of
certain
conditions
attached to the
sale, etc., of
patented articles.

- (a) to prohibit or restrict the purchaser, lessee, or licensee from using any article or class of articles, whether patented or not, or any patented process, supplied or owned by any person other than the seller, lessor, or licensor or his nominees; or
- (b) to require the purchaser, lessee, or licensee to acquire from the seller, lessor, licensor, or his nominees, any article or class of articles not protected by the patent; and any such condition shall be null and void, as being in restraint of trade and contrary to public policy:

Provided that this subsection shall not apply if—

(i) the seller, lessor, or licensor proves that at the time the contract was entered into the purchaser, lessee, or licensee had the option of purchasing the article or obtaining a lease or licence on reasonable terms, without such conditions as aforesaid; and

(ii) the contract entitles the purchaser, lessee, or licensee to relieve himself of his liability to observe any such condition on giving the other party three months notice in writing and on payment in compensation for such relief in the case of a purchase of such sum, or in the case of a lease or licence of such rent or royalty for the residue of the term of the contract, as may be fixed by an arbitrator appointed by the Minister.

(2) In any action, application, or proceedings under this Act no person shall be estopped from applying for or obtaining relief by reason of any admission made by him as to the reasonableness of the terms offered to him under paragraph (i) of the provision to sub-section (1) of this section.

(3) Any contract relating to the lease of or licence to use or work any patented article or patented process may at any time after the patent or all the patents by which the article or process was protected at the time of the making of the contract has or have ceased to be in force, and notwithstanding anything in the same or in any other contract to the contrary, be determined by either party on giving three months notice in writing to the other party.

(4) The insertion by the patentee in a contract of any condition which by virtue of this section is null and void shall be available as a defence to an action for infringement of the patent to which the contract relates brought while that contract is in force.

(5) Nothing in this section shall—

- (a) affect any condition in a contract whereby a person is prohibited from selling any goods other than those of a particular person; or
- (b) be construed as validating any contract which would, apart from this section, be invalid; or
- (c) affect any right of determining a contract or condition in a contract exercisable independently of this section; or

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

- (d) affect any condition in a contract for the lease of or licence to use a patented article, whereby the lessor or licensor reserves to himself or his nominee the right to supply such new parts of the patented article as may be required to put or keep it in repair.

Chemical
products and
substances
intended for
food or medicine.

55.—(1) In the case of inventions relating to substances prepared or produced by chemical processes or intended for food or medicine, the specification shall not include claims for the substance itself, except when prepared or produced by the methods or processes of manufacture described and claimed or by their obvious chemical equivalents: Provided that, in an action for infringement of a patent where the invention relates to the production of a new substance, any substance of the same chemical composition and constitution shall in the absence of proof to the contrary be deemed to have been produced by the patented process.

(2) In the case of any patent for an invention intended for or capable of being used for the preparation or production of food or medicine, the controller shall, unless he sees good reason to the contrary, grant to any person applying for the same, a licence limited to the use of the invention for the purposes of the preparation or production of food or medicine but not otherwise; and, in settling the terms of such licence and fixing the amount of royalty or other consideration payable, the controller shall have regard to the desirability of making the food or medicine available to the public at the lowest possible price consistent with giving to the inventor due reward for the research leading to the invention.

Any decision of the controller under this sub-section shall be subject to appeal to the court.

Acts which do
not amount to
anticipation.

56.—(1) An invention covered by a patent granted or registered in Saorstát Éireann shall not be deemed to have been anticipated by reason of its publication in—

- (a) a specification left in the Patent Office in London pursuant to an application made in that Office not less than fifty years before the date of the application for the patent, or
- (b) a provisional specification left in the Patent Office in London before the commencement of this Part of this Act and not followed by a complete specification, or
- (c) a provisional specification left in the Office and not followed by a complete specification.

(2) A patent shall not be held to be invalid by reason only of the invention in respect of which the patent was granted, or any part thereof, having been published prior to the date of the patent, if the patentee proves to the satisfaction of the court that the matter published was derived or obtained from him, and that the publication was made without his knowledge or consent, and, if he learnt of the publication before the date of his application for the patent, that he applied for and obtained protection for his invention with all reasonable diligence after learning of the publication:

Provided that the protection afforded by this sub-section shall not extend to a patentee who has commercially worked his invention in Saorstát Éireann otherwise than for the purpose of reasonable trial of the invention prior to the application for the patent.

Discrepancies
between
provisional and
complete
specifications.

57.—A patent shall not be held to be invalid on the ground that the complete specification describes a further or different invention to that contained in the provisional specification if the invention therein described, so far as it is not contained in the provisional specification, was novel at the date when the complete specification was put in, and the applicant was the first and true inventor thereof.

Rights of
representative of
deceased
inventor.

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

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

(2) Every such application must contain a declaration by the legal representative that he believes the deceased person to have been the true and first inventor of the invention.

59.—If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the controller, the controller may at any time seal a duplicate thereof. Loss or destruction of patent.

60.—(1) The exhibition of an invention at an industrial or international exhibition, certified as such by the Minister, 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, or the reading of a paper by an inventor before a learned society or the publication of the paper in the society's transactions, shall not prejudice the right of the inventor to apply for and obtain a patent in respect of the invention or the validity of any patent granted on the application: Provided that— Publication of invention at certain exhibitions.

(a) the exhibitor, before exhibiting the invention, or the person reading such paper or permitting such publication, gives the controller the prescribed notice of his intention to do so; and

(b) the application for a patent is made before or within six months from the date of the opening of the exhibition, or the reading or publication of such paper.

(2) The Executive Council may by Order apply this section to any exhibition mentioned in the Order in like manner as if it were an industrial or international exhibition certified as such by the Minister and any such Order may provide that the exhibitor shall be relieved from the condition of giving notice to the controller of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as may be stated in the Order.

61.—(1) A patent shall not prevent the use of an invention for the purposes of the navigation of a foreign vessel within the area of jurisdiction of the Government of Saorstát Éireann, or the use of an invention in a foreign vessel within that area, 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 Saorstát Éireann. Use of invention on foreign vessel in home waters.

(2) This section shall not extend to vessels of any foreign state of which the laws do not confer corresponding rights with respect to the use of inventions in vessels of Saorstát Éireann while in the ports of that state, or in the waters within the jurisdiction of its courts.

(3) For the purposes of this section the expression "foreign vessel" includes a ship registered in a British dominion and the expression "foreign state" includes a British dominion.

62.—(1) There shall be kept at the Office a book called the register of patent agents, and no person shall practice, describe himself, or hold himself out, or permit himself to be described or held out, as a patent agent, unless— Patent agents to be registered.

(a) in the case of an individual, he is registered as a patent agent in the register of patent agents;

(b) in the case of a firm, the firm and every partner of the firm is so registered;

(c) in the case of a company, the company and every director and the manager (if any) of the company is so registered.

(2) If and when the Minister so directs there shall be kept at the Office a book called the register of clerks in which shall be entered the names of approved clerks of registered patent agents.

(3) If at any time after the expiration of three months from the commencement of this Act, any person contravenes the pro-

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

visions of this section, he shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding twenty pounds, and in the case of a company every director, manager, secretary, or other officer of the company who is knowingly a party to the contravention shall be guilty of a like offence and liable to a like fine.

(4) For the purposes of this section, the expression "patent agent" means a person, firm, or company carrying on for gain in Saorstát Eireann the business of applying for or obtaining patents in Saorstát Eireann or elsewhere.

(5) Nothing in this section shall be taken to prohibit solicitors from taking such part as they have heretofore taken in proceedings analogous to any proceedings under this Act.

(6) No alien shall be registered as a patent agent.

Management of
register of
patent agents.

63.—Any person who—

(a) resides or has a place of business in Saorstát Eireann, and

(b) is not an alien, and

(c) possesses the prescribed educational and professional qualifications, and

(d) complies with the prescribed conditions,

shall be eligible to be registered in the register of patent agents and shall on application in the prescribed form and manner and payment of the prescribed fee be so registered.

(2) Any person registered in the register of patent agents who

(a) ceases to be eligible to be so registered, or

(b) is proved to the satisfaction of the Minister to have been convicted of such an offence or to have been guilty of such misconduct as renders him unfit in the opinion of the Minister to be a patent agent, or

(c) applies to be removed from the register,

may be removed by the Minister from the register of patent agents, but no person shall be so removed (except on his own application) without being given an opportunity of being heard.

(3) The Minister may by order make rules for the management of the register of patent agents and may by such rules prescribe any matter or thing referred to in this section as prescribed, and in particular may so prescribe the educational and professional qualifications and the conditions for eligibility for registration in that register, and the maximum fees which may be charged by any person registered in the register of patent agents or by any solicitor for such services in connection with the application for or the obtaining of patents as may be specified in such rules.

(4) If a register of clerks is established under this Act the Minister may by order make rules for the management of such register and may by such rules prescribe the qualifications and conditions for eligibility for and the fees to be paid on registration in such register.

(5) In this section the word "prescribed" means prescribed by rules made under this section.

PART III.—DESIGNS.

Registration of
designs
generally.

64.—(1) The controller may (subject to the provisions of this section) on the application made in the prescribed form and manner of any person claiming to be the proprietor of any new or original design not published in the late United Kingdom before the establishment of Saorstát Eireann and not previously published in Saorstát Eireann register such design under this Act.

(2) Where copyright subsists under Parts VI. and VII. of this Act in the artistic work defining a design, such design shall not be registered under this Part of this Act without the consent of the owner of such copyright.

(3) The same design may be registered in more than one class, and, in case of doubt as to the class in which a design ought to be registered, the controller may decide the question.

(4) The controller may, if he thinks fit, refuse to register any design presented to him for registration, but any person aggrieved by any such refusal may (except where an appeal lies

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

under this Act to the law officer) appeal to the court, and the court shall, after hearing the applicant and, if so required the controller make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(5) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within the prescribed time shall be deemed to be abandoned.

(6) A design when registered shall be registered as of the date of the application for registration.

65.—(1) Any person or the legal representative or assignee of any person who applied after the 6th day of December, 1921, and before the commencement of this Part of this Act to the Minister for Economic Affairs of the late Provisional Government of Ireland or to the Minister for Industry and Commerce of Saorstát Éireann for the registration of a design shall be entitled to apply under this Act within one year after the commencement of this Part of this Act for the registration of the same design and shall be entitled to have such application under this Act dated and treated as having been made as of the date of the first-mentioned application for the purposes of determining the respective priorities of the said application under this Act and any other application, fixing the date as of which the design is to be registered, and determining whether the design had been previously published in Saorstát Éireann.

Registration of
 designs in
 certain cases.

(2) Any person or the legal representative or assignee of any person who has obtained between the 6th day of December, 1921, and the commencement of this Part of this Act protection for a design in any British dominion (other than Great Britain and Northern Ireland) or foreign state to which the provisions of section 152 (which relates to international arrangements) of this Act are applied or declared to be applicable by order made under that section shall be entitled to apply under this Act within one year after the commencement of this Part of this Act for the registration of the same design and shall be entitled to have the said application under this Act dated and treated as having been made as of the date of the application for protection of the said design in such British dominion or foreign state for the purposes of determining the respective priorities of the said application under this Act and any other application, fixing the date as of which the design is to be registered, and determining whether the design had been previously published in Saorstát Éireann.

(3) Any person who applies under the provisions of this section for the registration of a design may at any time before the completion of such registration (hereinafter called the first-mentioned registration) apply to the controller for the cancellation of any registration (hereinafter called the second-mentioned registration) of the same design made under section 66 (which relates to the registration of designs registered in the Patent Office in London) of this Act and dated as of a date between the 6th day of December, 1921, and the commencement of this Part of this Act on the ground that the date of the application for the second-mentioned registration was subsequent to the date of an application made by the applicant for the first-mentioned registration to the Minister for Economic Affairs of the late Provisional Government of Ireland or to the Minister for Industry and Commerce of Saorstát Éireann or in any such British dominion or foreign state as is mentioned in the foregoing sub-section for registration of the same design, and the controller may on such application for cancellation cancel the second-mentioned registration on the ground aforesaid but on no other ground.

(4) An appeal shall lie to the law officer from every decision of the controller on an application for cancellation under the foregoing sub-section.

66.—(1) The person who is for the time being registered in the Patent Office in London as the proprietor of a design which is registered in that Office at the commencement of this Part of this

Registration of
 designs
 registered in
 Patent Office in
 London.

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

Act shall, on payment of the prescribed fee and furnishing to the controller for registration certified copies of such design and of the entries in the British register relating thereto, be entitled at any time within six months after the commencement of this Part of this Act to have such design registered under this Act in the register of designs in the Office in the same classes and subject to the same notices and other matters as such design is registered in and subject to in the Patent Office in London at the date of the application for registration under this Act.

(2) For all purposes under this Act a design registered pursuant to this section shall be deemed to have been first registered under this Act on the date on which such design was first registered in the Patent Office in London notwithstanding that such date is prior to the passing of this Act or to the commencement of this Part of this Act and (whenever appropriate) the period of the copyright in such design shall be deemed to have been extended under this Act on the date or respective dates and for the time or respective times on and for which such period was extended in the Patent Office in London before the registration of such design pursuant to this section whether such date or dates was or respectively were prior or subsequent to the passing of this Act or the commencement of this Part of this Act.

**Registration of
designs in new
classes.**

67.—Where a design has been registered in one or more classes of goods the application of the proprietor of the design to register it in some one or more other classes shall not be refused, nor shall the registration thereof be invalidated—

- (a) on the grounds of the design not being a new or original design, by reason only that it was so previously registered; or
- (b) on the ground of the design having been previously published in Saorstát Eireann, by reason only that it has been applied to goods of any class in which it was so previously registered:

Provided that such subsequent registration shall not extend the period of copyright in the design beyond that arising from the previous registration.

**Certificate of
registration.**

68.—(1) The controller shall grant a certificate of registration to the proprietor of the design when registered.

(2) The controller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, furnish one or more copies of the certificate.

**Register of
designs.**

69.—(1) There shall be kept at the 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 be prescribed.

(2) The register of designs shall be *prima facie* evidence of all matters by this Act directed or authorised to be entered therein.

**Copyright in
registered
designs.**

70.—(1) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, and subject and without prejudice to the copyright conferred by Part VII. of this Act in respect of certain artistic works defining designs, have copyright in the design during five years from the date of registration.

(2) If within the prescribed time before the expiration of the said five years application for the extension of the period of copyright is made to the controller in the prescribed manner, the controller shall on payment of the prescribed fee extend the period of copyright for a second period of five years from the expiration of the original period of five years.

(3) If within the prescribed time before the expiration of such second period of five years application for the extension of the

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

period of copyright is made to the controller in the prescribed manner, the controller may, subject to any rules under this Act, on payment of the prescribed fee extend the period of copyright for a third period of five years from the expiration of the second period of five years.

71.—(1) Before delivery on sale of any articles to which a registered design has been applied, the proprietor shall—

Requirements
before delivery
on sale.

(a) (if exact representations or specimens were not furnished on the application for registration), furnish to the controller the prescribed number of exact representations or specimens of the design; and if he fails to do so the controller may erase his name from the register, and thereupon the copyright in the design shall cease; and

(b) cause each such article to be marked with the prescribed mark, or with the prescribed words or figures denoting that the design is registered; and if he fails to do so the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.

(2) Where a representation is made to the Minister by or on behalf of any trade or industry that in the interests of the trade or industry it is expedient to dispense with or modify as regards any class or description of articles any of the requirements of this section as to marking, the Minister may if he thinks fit, by general rules made under this Act dispense with or modify such requirements as regards any such class or description of articles to such extent and subject to such conditions as he thinks fit.

72.—The disclosure of a design by the proprietor to any other person, in such circumstances as would make it contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person other than the proprietor of the design, and the acceptance of a first and confidential order for goods bearing a new or original textile design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof if registration thereof is obtained subsequently to the disclosure or acceptance.

No publication
by confidential
disclosure of
design.

73.—(1) During the existence of copyright in a design, or such shorter period not being less than two years from the registration of the design as may be prescribed, the design shall not be open to inspection except by the proprietor or a person authorised in writing by him, or a person authorised by the controller or by the court, and furnishing such information as may enable the controller to identify the design, and shall not be open to the inspection of any person except in the presence of the controller, or of an officer acting under him, and 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:

Inspection of
registered
designs.

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) After the expiration of the copyright in a design or such shorter period as aforesaid, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

(3) Different periods may be prescribed under this section for different classes of goods.

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

Information as
to existence of
registration.

74.—On the request of any person furnishing such information as may enable the controller to identify the design, and on payment of the prescribed fee, the controller shall inform such person whether the registration still exists in respect of the design, and if so, in respect of what classes of goods, and shall state the date of registration, and the name and address of the registered proprietor.

Cancellation of
registration of
design.

75.—(1) At any time after the registration of a design any person interested may apply to the controller for the cancellation of the registration of the design, on either of the following grounds:—

(a) that the design was prior to the date of registration thereof published either in the late United Kingdom before the establishment of Saorstát Eireann or in Saorstát Eireann;

(b) that the design is applied by manufacture to any article in a foreign country, and is not so applied by manufacture in Saorstát Eireann to such an extent as is reasonable in the circumstances of the case:

Provided that, if the application be on the last-mentioned ground, and the controller is satisfied that the time which has elapsed from the date of registration has been insufficient for such application by manufacture in Saorstát Eireann, the controller may adjourn the application for such time as he may deem sufficient for that purpose; and that in lieu of cancellation the controller may order the grant of a compulsory licence on such terms as he may consider just.

(2) An appeal shall lie from any order of the controller under this section to the court, and the controller may at any time refer any such application to the court for trial.

Publication of
designs at
certain
exhibitions.

76.—(1) The exhibition at an industrial or international exhibition certified as such by the Minister, 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—

(a) the exhibitor, before exhibiting the design or article, or publishing a description of the design, gives the controller the prescribed notice of his intention to do so; and

(b) the application for registration is made before or within six months from the date of the opening of the exhibition.

(2) The Executive Council may, by Order, apply this section to any exhibition mentioned in the Order in like manner as if it were an industrial or international exhibition certified as such by the Minister, and any such Order may provide that the exhibitor shall be relieved from the condition of giving notice to the controller of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as may be stated in the Order.

Ministers may
acquire designs.

77.—(1) It shall be lawful for any Minister to acquire by purchase or otherwise from the proprietor of a design (whether registered in Saorstát Eireann or elsewhere or unregistered) and it shall be lawful for such proprietor to sell or otherwise alienate to such Minister, such design or any right, liberty, or privilege in relation thereto upon such terms as may be agreed upon between the Minister and the proprietor and be sanctioned by the Minister for Finance.

(2) Any Minister may procure the registration (subject to the provisions of this Act) of any design acquired by or vested in him under this section or otherwise in the appropriate register established under this Act, and may procure the registration of any

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

such design in any register maintained in any place outside Saorstát Eireann if and so far as and subject to such conditions as such registration is permitted by the law regulating such register, and in any such case may procure himself to be entered as the proprietor of any design so registered.

(3) It shall be lawful for a Minister to grant to any person a licence to use and apply to any goods any design of which such Minister shall be the registered proprietor and to charge such fees as shall be sanctioned by the Minister for Finance for such licences.

(4) Every licence granted by a Minister under the foregoing sub-section may contain provisions ensuring that the design to which such licence relates shall be applied by the licensee only to goods grown, manufactured, or produced in Saorstát Eireann, and any such licence may also contain such provisions, conditions, and restrictions as the Minister may think proper for ensuring that the design to which such licence relates shall only be applied by the licensee to goods of a specified quality or description.

(5) A Minister may at any time take such lawful steps, whether by action, or prosecution at law or otherwise, as he shall think proper to restrain or punish infringements of or otherwise to protect the copyright in any design of which he shall be the registered proprietor under this section, and may take such steps in Saorstát Eireann or in any other country or place in which he shall be so registered.

(6) In this section the word "Minister" means a Minister head of a Department of State established under the Ministers and Secretaries Act, 1924 (No. 16 of 1924).

78.—(1) During the existence of copyright in any design it shall not be lawful for any person—

Prohibition of
infringement of
copyright in
design.

(a) for the purposes of sale to apply or cause to be applied to any article in any class of goods in which the design is registered the design or any fraudulent or obvious imitation thereof, except with the licence or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or

(b) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article without the consent of the registered proprietor to publish or expose or cause to be published or exposed for sale that article.

(2) If any person acts in contravention of this section he shall be liable for every contravention to pay to the registered proprietor of the design a sum not exceeding fifty pounds, recoverable as a simple contract debt, or if the proprietor elects to bring an action for the recovery of damages for such contravention, and for an injunction against the repetition thereof, he shall be liable to pay such damages as may be awarded and to be restrained by injunction accordingly:

Provided that the total sum recoverable as a simple contract debt in respect of any one design shall not exceed one hundred pounds.

79.—Where an application for a design has been abandoned or refused, the application and any drawings, photographs, tracings, representations, or specimens left in connection with the application shall not at any time be open to public inspection or be published by the controller.

Applications
abandoned or
refused.

PART IV.—TRADE MARKS.

80.—(1) There shall be kept at the Office a book called the register of trade marks, wherein shall be entered all registered trade marks with the names and addresses of their proprietors, notification of assignments and transmissions, disclaimers, condi-

Register of
trade marks.

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

tions, limitations, and such other matters relating to such trade marks as may from time to time be prescribed.

(2) The register of trade marks shall be kept under the control and management of the controller.

(3) The register of trade marks shall be divided into two parts to be called Part A and Part B, which parts shall respectively comprise the trade marks directed by this Act to be registered therein respectively.

Trade mark
must be for par-
ticular goods.

81.—A trade mark must be registered in respect of particular goods or classes of goods.

Requisites for
registration in
Part A.

82.—(1) In order to be capable of registration in Part A of the register, a trade mark must contain or consist of at least one of the following essential particulars:—

- (a) the name of a company, individual, or firm represented in a special or particular manner;
- (b) the signature of the applicant for registration or some predecessor in his business;
- (c) an invented word or invented words;
- (d) a word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;
- (e) any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the above paragraphs (a), (b), (c) and (d), shall not be registrable under the provisions of this paragraph, except upon evidence of its distinctiveness.

(2) Notwithstanding the provisions of the foregoing sub-section, any special or distinctive word or words, letter, numeral, or combination of letters or numerals used as a trade mark by the applicant or his predecessors in business before the thirteenth day of August one thousand eight hundred and seventy-five, which has continued to be used (either in its original form or with additions or alterations not substantially affecting the identity of the same) down to the date of the application for registration shall be registrable as a trade mark under this Act.

(3) For the purposes of this section “distinctive” shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons, and in determining whether a trade mark is so adapted, the tribunal may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

Colour of trade
marks.

83.—A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any tribunal having to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Deceptive or
misleading trade
marks.

84.—It shall not be lawful to register as a trade mark or part of a trade mark any matter, the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a court of justice.

Application for
registration in
Part A.

85.—(1) Any person claiming to be the proprietor of a trade mark who is desirous of registering the same in Part A of the register must apply in writing to the controller in the prescribed manner.

(2) Subject to the provisions of this Act the controller may refuse such application, or may accept it absolutely or subject to conditions, amendments, or modifications, or to such limitations, if any, as to mode or place of user or otherwise as he may think right to impose.

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

(3) In case of any such refusal or conditional acceptance the controller shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Minister or to the court at the option of the applicant.

(4) An appeal under this section shall be made in the prescribed manner, and on such appeal the Minister or the court, as the case may be, shall, if required, hear the applicant and the controller, and shall make an order determining whether, and subject to what conditions, amendments, or modifications, if any, or to what limitations, if any, as to mode or place of user or otherwise, the application is to be accepted.

(5) Appeals under this section shall be heard on the materials so stated by the controller to have been used by him in arriving at his decision, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the controller other than those stated by him, except by leave of the tribunal hearing the appeal. When any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.

(6) The controller or the Minister or the court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connexion with the application, or may permit the applicant to amend his application upon such terms as they may think fit.

86.—(1) Where any mark has for not less than two years been *bonâ fide* used in Saorstát Eireann upon or in connection with any goods (whether for sale in Saorstát Eireann or exportation abroad), for the purpose of indicating that they are the goods of the proprietor of the mark by virtue of manufacture, selection, certification, dealing with or offering for sale, the person claiming to be the proprietor of the mark may apply in writing to the controller in the prescribed manner to have the mark entered as his registered trade mark in Part B. of the register in respect of such goods.

Application for
registration in
Part B.

(2) The controller shall consider every such application for registration of a trade mark in Part B. of the register, and if it appears to him, after such search, if any, as he may deem necessary, that the registration of the trade mark is prohibited by this Act or if he is not satisfied that the mark has been so used as aforesaid, or that it is capable of distinguishing the goods of the applicant, he may refuse the application, or may accept it subject to conditions, amendments or modifications as to the goods or classes of goods in respect of which the mark is to be registered, or to such limitations, if any, as to mode or place of user or otherwise as he may think right to impose, and in any other case he shall accept the application, but every acceptance of any such application shall be subject to the provisions of this Act.

(3) Every such application shall be accompanied by a statutory declaration verifying the user, including the date of first user, and such date shall be entered on the register.

(4) Any such refusal or conditional acceptance shall be subject to appeal to the court, and, if the ground for refusal is insufficiency of evidence as to user, such refusal shall be without prejudice to any application for registration of the trade mark in Part A of the register.

(5) A mark may be registered in Part B of the register notwithstanding any registration in Part A of the register by the same proprietor of the same mark or any part or parts thereof.

87.—If any person applies for the registration of a trade mark in Part A of the register, the controller may, if the applicant is willing, instead of refusing the application, treat it as an application for registration in Part B of the register, and deal with the application accordingly.

Translation of
application from
Part A to
Part B.

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

Registration of
trade marks in
certain cases.

88.—(1) Any person or the legal representative or assignee of any person who applied after the 6th day of December, 1921, and before the commencement of this Part of this Act to the Minister for Economic Affairs of the late Provisional Government of Ireland or to the Minister for Industry and Commerce of Saorstát Éireann for the registration of a trade mark shall be entitled to apply under this Act within one year after the commencement of this Part of this Act for the registration of the same trade mark and shall be entitled to have such application under this Act dated and treated as having been made as of the date of the first-mentioned application for all purposes including the date as of which the trade mark is to be registered.

(2) Any person or the legal representative or assignee of any person who has obtained between the 6th day of December, 1921, and the commencement of this Part of this Act protection for a trade mark in any British dominion (other than Great Britain or Northern Ireland) or foreign state to which the provisions of section 152 (which relates to international arrangements) of this Act are applied or declared to be applicable by order made under that section shall be entitled to apply under this Act within one year after the commencement of this Part of this Act for the registration of the same trade mark and shall be entitled to have the said application under this Act dated and treated as having been made as of the date of the application for protection of the said trade mark in such British dominion or foreign state for all purposes including the date as of which the trade mark is to be registered.

(3) Any person who applies under the provisions of this section for the registration of a trade mark (hereinafter called the first-mentioned trade mark) may at any time before the completion of such registration apply to the controller for the removal from the register of any trade mark (hereinafter called the second-mentioned trade mark) registered under section 89 (which relates to the registration of trade marks registered in the Patent Office in London) of this Act as of any date between the 6th day of December, 1921, and the commencement of this Part of this Act but subsequent to the date as of which the first-mentioned trade mark might be registered and on such application the controller may remove the second-mentioned trade mark from the register on any ground on which the registration of such second-mentioned trade mark could have been successfully opposed by the applicant for such removal but on no other ground.

(4) An appeal shall lie to the law officer from every decision of the controller on an application for removal under the foregoing sub-section.

Registration of
trade marks
registered in
Patent Office
in London.

89.—(1) The person who is for the time being registered in the Patent Office in London as the proprietor of a trade mark which is registered in that office at the commencement of this Part of this Act (including a mark registered under section 62 of the Trade Marks Act, 1905) shall, on payment of the prescribed fee and furnishing to the controller for registration certified copies of such trade mark and of the entries in the British register relating thereto, be entitled at any time within six months after the commencement of this Part of this Act to have such trade mark registered under this Act in the register of trade marks in the Office in the like part of the register and in respect of the like goods or classes of goods and subject to the same notifications and other matters as such trade mark is registered in and subject to in the Patent Office in London at the date of the application for registration under this Act and also subject to any further limitations imposed by this Act and applicable to such trade mark.

(2) For all purposes under this Act a trade mark registered pursuant to this section shall be deemed to have been first registered under this Act on the date on which such trade mark was first registered in the Patent Office in London notwithstanding that such date is prior to the passing of this Act or to the commence-

[1927.] *Industrial and Commercial* [No. 16.]
Property (Protection) Act, 1927.

ment of this Part of this Act and (whenever appropriate) the registration of such trade mark shall be deemed to have been renewed under this Act on the date or respective dates and for the period or respective periods on and for which the registration of such trade mark in the Patent Office in London was renewed in that Office before the registration of such trade mark pursuant to this section whether such date or dates was or respectively were prior or subsequent to the passing of this Act or to the commencement of this Part of this Act.

90.—(1) When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions and limitations, the controller shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the prescribed manner, and every such advertisement shall set forth all conditions and limitations subject to which the application has been accepted. Advertisement of application.

(2) In any case in which he deems it is expedient so to do the controller may cause an application for registration of a trade mark to be advertised before acceptance thereof, and whenever an application is so advertised it shall not be necessary to make the advertisement required by sub-section (1) of this section.

(3) This section shall not apply to an application for registration of a trade mark which is registered in the Patent Office in London and was first so registered at the commencement of this Part of this Act.

91.—(1) Any person may, within the prescribed time from the date of the advertisement of an application for registration of a trade mark, give notice to the controller of opposition to such registration. Opposition to registration.

(2) Such notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.

(3) The controller shall send a copy of such notice to the applicant, and within the prescribed time after the receipt of such notice, the applicant shall send to the controller in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement, the controller shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions or what limitations as to mode or place of user or otherwise, registration is to be permitted.

(5) The decision of the controller shall be subject to appeal to the court.

(6) An appeal under this section shall be made in the prescribed manner, and on such appeal the court shall, if required, hear the parties and the controller, and shall make an order determining whether, and subject to what conditions, if any, or what limitations, if any, as to mode or place of user or otherwise, registration is to be permitted.

(7) On the hearing of any such appeal any party may either in the manner prescribed or by special leave of the court bring forward further material for the consideration of the court.

(8) In proceedings under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the controller other than those stated by the opponent as herein-above provided except by leave of the court. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

(9) In any appeal under this section in relation to registration in Part A of the register, the court may, after hearing the controller, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

Disclaimer of
non-distinctive
elements.

92.—If a trade mark in respect of which an application is made to enter or which has been entered in Part A of the register contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade or otherwise, of a non-distinctive character, the controller or the Minister or the court, in deciding whether such trade mark shall be entered or shall remain upon that Part of the register, may require, as a condition of its being upon that Part of the register, that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark, or of all or any portion of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may consider needful for the purpose of defining his rights under such registration: Provided always that no disclaimer upon the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Date of
registration.

93.—When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or having been opposed the opposition has been decided in favour of the applicant, the controller shall, unless the mark has been accepted in error or the Minister otherwise directs, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the application for registration, and such date shall be deemed for the purpose of this Act to be the date of registration.

Certificate of
registration.

94.—On the registration of a trade mark the controller shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark under the hand and sealed with the seal of the controller.

Delay in com-
pletion of
registration.

95.—Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the controller may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in such notice.

Identical trade
marks.

96.—Except by order of the court or in the case of trade marks in use before the thirteenth day of August one thousand eight hundred and seventy-five, no trade mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor which is already on the register with respect to such goods or description of goods, or so nearly resembling such a trade mark as to be calculated to deceive.

Rival claims to
identical marks.

97.—Where each of several persons claims to be proprietor of the same trade mark, or of nearly identical trade marks in respect of the same goods or description of goods, and to be registered as such proprietor, the controller may refuse to register any of them until their rights have been determined by the court, or have been settled by agreement in a manner approved by him or (on appeal) by the Minister.

Concurrent user.

98.—In case of honest concurrent user or of other special circumstances which, in the opinion of the court, or the controller make it proper so to do, the court or the controller may permit the registration of the same trade mark, or of nearly

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

identical trade marks, for the same goods or description of goods by more than one proprietor subject to such conditions and limitations, if any, as to mode or place of user or otherwise as the court or the controller, as the case may be, may think it right to impose.

99.—(1) Save as otherwise provided by this Act, a trade mark when registered shall be assigned and transmitted only in connexion with the goodwill of the business concerned in the goods for which it has been registered and shall be determinable with that goodwill.

Assignment and
transmission of
trade marks.

(2) Nothing in this section contained shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in any British dominion or protectorate or any foreign country in connexion with any goods for which it is registered together with the goodwill of the business therein in such goods, and the assignment of such right to use the same shall constitute the assignee a proprietor of a separate trade mark for the purpose of the immediately preceding section, subject to such conditions and limitations as may be imposed under that section.

100.—(1) In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of such person does not pass to one successor but is divided, the controller may (subject to the provisions of this Act as to associated trade marks), on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, and to such limitations, if any, as to mode or place of user as he may think necessary in the public interest.

Apportionment of
trade marks
on dissolution of
partnership.

(2) Every decision of the controller under this section shall be subject to appeal to the Minister.

101.—If application be made for the registration in Part A of the register of a trade mark identical with or so closely resembling a trade mark of the applicant already on that Part of the register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal hearing the application may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks.

Associated trade
marks.

102.—If the proprietor of a trade mark registered in Part A of the register claims to be entitled to the exclusive use of any portion of such trade mark separately he may apply to register the same in the said Part A as separate trade marks. Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks and shall be entered on the register as such, but the user of the whole trade mark shall for the purposes of this Act be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains.

Combined trade
marks.

103.—(1) When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

Series of trade
marks.

- (a) statements of the goods for which they are respectively used or proposed to be used; or
- (b) statements of number, price, quality, or names of places.
or
- (c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or
- (d) colour;

seeks to register such trade marks, they may be registered as a series in one registration.

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

(2) All the trade marks in a series of trade marks registered under this section shall if registered in Part A of the register be deemed to be, and shall be registered as, associated trade marks.

Assignment and user of associated trade marks.

104.—Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks. Provided that where under the provisions of this Act user of a registered trade mark is required to be proved for any purpose, the tribunal may if and so far as it shall think right accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

Duration of registration.

105.—The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Act.

Renewal of registration.

106.—The controller shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is in this Act termed "the expiration of the last registration."

Procedure on expiry of period of registration.

107.—At the prescribed time before the expiration of the last registration of a trade mark, the controller shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf such conditions have not been duly complied with, the controller may remove such trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

Status of unrenewed trade mark.

108.—Where a trade mark registered in Part A of the register has been removed from the register for non-payment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the controller that there had been no *bona fide* trade user of such trade mark during the two years immediately preceding such removal.

Removal from register of word trade marks used as name of articles.

109.—(1) Where in the case of an article or substance manufactured under any patent in force at or granted after the commencement of this Part of this Act, a word trade mark registered under this Act is the name or only practicable name of the article or substance so manufactured, all rights to the exclusive use of such trade mark, whether under the common law or by registration, shall cease upon the expiration or determination of the patent, and thereafter such word shall not be deemed a distinctive mark, and may be removed by the court from the register on the application of any person aggrieved.

(2) No word which is the only practicable name or description of any single chemical element or single chemical compound, as distinguished from a mixture, shall be registered as a trade mark, and any such word may be removed by the court from the register on the application of any person aggrieved:

Provided that the provisions of this sub-section shall not apply where the mark is used to denote only the proprietor's brand or make of such substance, as distinguished from the substance as made by others, and in association with a suitable and practicable name open to the public use.

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

(3) The power to remove a trade mark from the register conferred by this section shall be in addition to and not in derogation of any other powers of the court in respect of the removal of trade marks from the register.

(4) An application under this section may, at the option of the applicant, be made in the first instance to the controller, and in such case the controller shall have all the powers of the court under this section, but his decision shall be subject to appeal to the court.

110.—The registered proprietor of any trade mark may apply in the prescribed manner to the controller for leave to add to or alter such trade mark in any manner not substantially affecting the identity of the same, and the controller may refuse such leave or may grant the same on such terms and subject to such limitations as to mode or place of user as he may think fit, but any such refusal or conditional permission shall be subject to appeal to the Minister. If leave be granted, the trade mark as altered shall be advertised in the prescribed manner. Alteration of registered trade mark.

111.—(1) A registered trade mark may, on the application to the court of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any *bonâ fide* intention to use the same in connexion with such goods, and there has in fact been no *bonâ fide* user of the same in connexion therewith, or on the ground that there has been no *bonâ fide* user of such trade mark in connexion with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect of such goods. Non-user of trade mark.

(2) Any application under this section may, at the option of the applicant, be made in the first instance to the controller, and in such case the controller shall have all the powers of the court under this section, but his decision shall be subject to appeal to the court.

112.—Subject to the provisions of this Act—

- (a) the person for the time being entered in the register as proprietor of a trade mark shall, subject to any rights appearing from such register to be vested in any other person, have power to assign the same, and to give effectual receipts for any consideration for such assignment;
- (b) any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

Powers of registered proprietor.

113.—(1) Subject to the provisions of this Act relating to the registration of identical or nearly identical trade marks and to any limitations and conditions entered upon the register, the registration of a person in Part A of the register as proprietor of a trade mark shall, if valid, give to such person the exclusive right to the use of such trade mark upon or in connexion with the goods in respect of which it is registered. Rights of registered proprietor.

(2) Where two or more persons are registered in either Part of the register as proprietors of the same (or substantially the same) trade mark in respect of the same goods, no rights of exclusive user of such trade mark shall (except so far as their respective rights shall have been defined by the court) be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

114.—The registration of a person as the proprietor of a trade mark in Part B of the register shall be *primâ facie* evidence that that person has the exclusive right to the use of that trade mark, Effect of registration in Part B.

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

but, in any action for infringement of a trade mark entered in Part B of the register, no injunction or other relief shall be granted to the owner of the trade mark in respect of such registration, if the defendant establishes to the satisfaction of the court that the user of which the plaintiff complains is not calculated to deceive or to lead to the belief that the goods the subject of such user were goods manufactured, selected, certified, dealt with, or offered for sale by the proprietor of the trade mark.

Registration to be *prima facie* evidence of validity.

115.—In all legal proceedings relating to a registered trade mark (including applications for rectification of the register) the fact that a person is registered as proprietor of such trade mark shall be *prima facie* evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

Registration to be conclusive after seven years.

116.—(1) In all legal proceedings relating to a trade mark registered in Part A of the register (including applications for the rectification of the register) the original registration of such trade mark shall after the expiration of seven years from the date of such original registration be taken to be valid in all respects unless such original registration was obtained by fraud, or unless the trade mark is a trade mark the registration of which is prohibited by section 84 (which relates to deceptive or misleading trade marks) or section 138 (which relates to inventions, etc., contrary to law or morality) of this Act.

(2) Nothing in this Act shall entitle the proprietor of a trade mark registered in either Part of the register to interfere with or restrain the user by any person of a similar trade mark upon or in connexion with goods upon or in connexion with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user or registration whichever is the earlier of the first-mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to such person being put upon the register for such similar trade mark in respect of such goods under the provisions of this Act relating to the registration of identical or nearly identical trade marks.

Unregistered trade mark.

117.—(1) No person shall be entitled to institute any proceeding to prevent or to recover damages for the infringement of an unregistered trade mark unless such trade mark was in use before the thirteenth day of August one thousand eight hundred and seventy-five, and either has been refused registration under this Act, or has been, before the commencement of this Part of this Act, refused registration in the Patent Office in London.

(2) The controller may, on request, grant a certificate that registration under this Act has been refused.

Admission of evidence of trade usages.

118.—In any action or proceeding relating to a trade mark or trade name the tribunal shall admit evidence of the usages of the trade concerned and of any relevant trade mark or trade name or get up legitimately used by other persons.

No interference with use of own name, etc.

119.—No registration under this Act shall interfere with any *bona fide* use by a person of his own name or place of business or that of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods.

Remedies for "passing off" not affected.

120.—Nothing in this Act contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

Registration of marks by Ministers.

121.—(1) Any Minister may procure the registration in Part A of the register of a mark intended to indicate the origin, material, mode of manufacture, quality, accuracy, or other characteristic of goods to which it is applied and every such mark when so registered shall be deemed to be in all respects, save as is otherwise provided by this section, a registered trade mark and the Minister

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

by whom its registration was procured shall be and be registered as the proprietor thereof.

(2) An application for the registration of a mark under the foregoing sub-section shall be made in the prescribed manner by a Minister, and the registration of the mark shall be subject to the provisions of this Act relating to the registration of a trade mark in Part A of the register save in so far as such provisions are inconsistent with the provisions of this section.

(3) Any Minister may procure the registration in any register maintained in any place outside Saorstát Éireann of a mark (whether registered or not registered under the foregoing provisions of this section) intended to indicate the origin, material, mode of manufacture, quality, accuracy, or other characteristic of goods if and so far as and subject to such conditions as such registration is permitted by the law regulating such register, and in any such case may procure himself to be entered in such register as the proprietor of such mark.

(4) A Minister who is the registered proprietor of any such mark as is mentioned in the foregoing sub-sections of this section may grant to any person a licence to use such mark and to apply the same to all or any of the goods or classes of goods in respect of which such mark is registered but in the case of a mark registered in a register maintained in a place out of Saorstát Éireann only if and so far as the granting of such licence is permitted by the law regulating such register.

(5) Every licence granted by a Minister under the foregoing sub-section shall have effect according to the terms thereof and shall contain provisions for ensuring that the mark to which the licence relates shall be applied by the licensee only to goods grown, manufactured, or produced in Saorstát Éireann, and any such licence may also contain such terms and provisions as the Minister granting the same shall think proper and in particular provisions for ensuring that the mark to which the licence relates shall only be applied to goods of a specified quality or description.

(6) A Minister who is the registered proprietor of any such mark as aforesaid may require the controller to enter on or remove from the register in respect of such mark the words "licences not registrable," and, whenever and so long as such words are so entered in the register, licences made by the Minister under this section in respect of such marks shall not (notwithstanding the provisions of section 127 (which relates to registration of assignments, etc.) of this Act) be or be capable of being entered in the register or be refused admission in evidence in any court merely on account of such non-entry in the register.

(7) A Minister who is the registered proprietor of any such mark as aforesaid may at any time take such lawful steps, whether by action, prosecution at law, or otherwise as he shall think proper to prevent, restrain, or punish infringements of or otherwise to protect such mark and may take such steps in Saorstát Éireann or any other country in which he is registered as such proprietor.

(8) A mark registered under this section shall be deemed to be a trade mark within the meaning of any enactment heretofore passed by the Oireachtas relating to the registration of trade marks by Ministers.

(9) In this section the word "Minister" means a Minister head of a Department of State under the Ministers and Secretaries Act, 1924 (No. 16 of 1924).

122.—It shall be lawful for the Minister to take in any country or place outside Saorstát Éireann such lawful steps, whether by way of action or prosecution at law or otherwise, as he shall think proper to prevent, restrain, or punish the registration, use, or application in relation to or in respect of goods not grown, produced, or manufactured in Ireland of any trade mark or other mark or description indicating or suggesting or likely to lead to the belief that the goods in respect of which or to which such trade mark, mark, or description is used or applied were grown, manufactured, or produced in Ireland.

Misuse of trade marks indicative of Irish origin.

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

Trade marks
used solely as
certificates of
quality, etc.

123.—(1) Where any association or person undertakes to certify the origin, material, mode of manufacture, quality, accuracy, or other characteristic of any goods, by mark used upon or in connexion with such goods, the Minister if and so long as he is satisfied that such association or person is competent to certify as aforesaid, may if he shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trade association or trader or possessed of a goodwill in connexion with such certifying. When so registered such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person shall be deemed to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Minister.

(2) The proprietor of a mark registered under this section or of a mark originally registered in the Patent Office in London under section 62 of the Trade Marks Act, 1905 and subsequently registered under section 89 (which relates to the registration of trade marks registered in the Patent Office in London) of this Act in the register of trade marks in the Office, may assign such mark to the Minister and the Minister may take an assignment thereof, and on such assignment being made section 121 (which relates to the registration of trade marks by Ministers) of this Act shall apply to such mark as fully as if the Minister had procured the registration thereof under the said section 121.

PART V.

GENERAL PROVISIONS RELATING TO PATENTS,
DESIGNS AND TRADE MARKS.

Trusts not to be
entered in
registers.

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

Inspection of
and extracts
from registers.

125.—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 controller, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

Reports of
officers to be
privileged.

126.—Reports of examiners and other officers made under this Act shall not in any case be published or be open to public inspection, and shall not be liable to production or inspection, and shall not be liable to production or inspection in any legal proceeding, unless the court or officer having power to order discovery in such legal proceeding certifies that such production or inspection is desirable in the interests of justice, and ought to be allowed:

Provided that, on application being made by any person in the prescribed form, the controller may disclose the result of a search made under section 19 (which relates to documents to accompany specifications) or section 20 (which relates to investigation of specifications published previous to application) or section 21 (which relates to investigation of specifications published subsequent to application) of this Act on any particular application for the grant of a patent.

Registration of
assignments, etc.

127.—(1) 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, he shall make application to the controller to register his title, and the controller shall on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of such patent, design, or trade mark, and shall cause an entry to be made in the prescribed manner on the appropriate register of the assignment, transmission, or other instrument affecting the title.

(2) Where any person becomes entitled as mortgagee, licensee, or otherwise to any interest in a patent or a design, or as mortgagee or otherwise to any interest in a trade mark, he

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

shall make application to the controller to register his title, and the controller shall, on receipt of such application and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the appropriate register with particulars of the instrument (if any) creating such interest.

(3) The person registered as the proprietor of a patent, design, or trade mark shall, subject to the provisions of this Act, and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, or otherwise deal with the patent, design, or trade mark (including, in the case of a patent or a design, to grant licences in respect thereof), and to give effectual receipts for any consideration for any such assignment, licence, or dealing.

(4) Any equities in respect of a patent, design, or trade mark may be enforced in like manner as in respect of any other personal property.

(5) Except in cases of appeals under this section and applications and appeals complaining of the non-insertion in or omission from a register of an entry relating to a document or instrument, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of this section shall not be admitted in evidence in any court in proof of the title to a patent, or copyright in a design, or a trade mark, or to any interest therein, unless the court otherwise directs.

(6) Any decision of the controller under this section shall be subject to appeal to the court.

128.—The controller may on request made in the prescribed manner by the registered proprietor of a patent, design, or trade mark or by some person entitled by law to act in his name—

Power of
controller to
amend register.

- (a) correct any clerical error in or in connection with an application for a patent or in any patent or in any specification or in any register kept pursuant to any of the foregoing Parts of this Act;
- (b) enter any change in the name or address of any person who is entered on a register kept pursuant to any of the foregoing Parts of this Act;
- (c) cancel the registration of a design or trade mark either wholly or in respect of any goods or class of goods in or for which such design or trade mark is registered;
- (d) enter a disclaimer or memorandum relating to a design or trade mark which does not in any way extend the rights given by the existing registration of such design or trade mark.

129.—(1) Subject to the provisions of this Act the court may, on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from any register kept pursuant to any of the foregoing Parts of this Act of any entry or by any entry made in any such register without sufficient cause, or by any entry wrongly remaining on any such register, or by an error or defect in any entry in any such register, make such order for making, expunging, or varying such entry as it may think fit.

Power of court
to amend
register.

(2) The court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of any such register.

(3) The prescribed notice of any application under this section shall be given to the controller, who shall have the right to appear and be heard thereon, and shall appear if so directed by the court.

(4) In the case of fraud in the registration or transmission of a patent, or a registered design or trade mark, the controller may himself apply to the court under the provisions of this section.

(5) Any order of the court rectifying any such register shall direct that notice of the rectification be served on the controller in the prescribed manner, who shall upon the receipt of such notice rectify the register accordingly.

(6) Any application under this section (other than an application by the controller) may, at the option of the applicant, be

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

made in the first instance to the controller, and in such case the controller shall have all the powers of the court under this section, but his decision shall be subject to appeal to the court.

(7) The court may in any proceeding under this section in relation to the register of trade marks, direct a trade mark registered in Part A of that register to be removed to Part B of that register.

Rights of State
in respect of
patented
inventions and
registered
designs.

130.—(1) A patent and the registration of a design shall respectively have to all intents the like effect as against the State as they have against a citizen:

Provided that any Minister head of a Department of State may, by himself or by such of his agents, contractors, or others as may be authorised in writing by him at any time after the application, make, use, or exercise the invention, or use, or apply the design for the services of the State on such terms as may, either before or after the use thereof, be agreed on with the approval of the Minister for Finance between such Minister and the proprietor, or, in default of agreement, as may be settled in the manner hereinafter provided, and the terms of any agreement or licence concluded between the proprietor and any person other than a Minister shall be inoperative so far as concerns the making, use, or exercise of the invention or the use or application of the design for the service of the State:

Provided further that, where an invention which is the subject of any patent, or any registered design has, before the date of the patent or of the registration, been duly recorded in a document by or been tried by or on behalf of any such Minister (such invention or design not having been communicated directly or indirectly by the applicant or the proprietor) any Minister or such of his agents, contractors, or others as may be authorised in writing by them, may make, use, and exercise the invention, or use or apply the design so recorded or tried for the service of the State free of any royalty or other payment to the proprietor, notwithstanding the existence of the patent or registration, and if in the opinion of such Minister the disclosure to the applicant or the proprietor, as the case may be, of the document recording the invention or design or the evidence of the trial thereof would be detrimental to the public interest, such disclosure may be made confidentially to counsel on behalf of the applicant or proprietor or to any independent expert mutually agreed upon.

(2) In case of any dispute as to the making, use, or exercise of an invention, or use or application of a design, under this section, or the terms therefor, or as to the existence or scope of any record or trial as aforesaid, the matter shall be referred to the court for decision, which shall have the power to refer the whole matter or any question or issue of fact arising thereon to be tried before an arbitrator upon such terms as it may direct. The court or arbitrator, as the case may be, may with the consent of the parties take into consideration the validity of the patent or registration, for the purposes only of the reference and the determination of the issues between the applicant and such Minister. The court or arbitrator in settling the terms as aforesaid shall be entitled to take into consideration any benefit or compensation which the proprietor or any other person interested in the patent or design may have received directly or indirectly from the State or from any Minister or any Government Department in respect of such patent or design.

(3) The right to use an invention or a design for the service of the State under the provisions of this section, shall include the power to sell any articles made in pursuance of such right which are no longer required for the service of the State.

(4) Nothing in this section shall affect the right of the State or of any person deriving title directly or indirectly from the State, to sell or use any articles forfeited under the laws relating to the customs or excise.

(5) In this section the word "applicant" means either an applicant for a patent or an applicant for the registration of a

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

design, as the case may require, and the word " proprietor " means an inventor, or a patentee, or a registered proprietor of a design, as the case may require.

131.—(1) Where any person claiming to have an interest in a patent, registered design, or registered trade mark, by circulars, advertisements, or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged infringement of the patent, or of the copyright in the design or of the trade mark, any person 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 he has sustained thereby, if the alleged infringement to which the threats related was not in fact an infringement of the patent, copyright, or trade mark.

Remedy in case of groundless threats of legal proceedings.

(2) This section shall not apply if an action for the infringement of the patent, copyright in the design, or trade mark (as the case may be) is commenced and prosecuted with due diligence.

132.—(1) In an action for infringement of a patent the Court may certify that the validity of any claim in the specification of the patent came in question, and if the Court so certifies then in any subsequent action for infringement of such claim the plaintiff in such subsequent action, on obtaining a final order or judgment in his favour, shall, unless the Court trying such subsequent action otherwise directs, have his full costs and expenses as between solicitor and client so far as that claim is concerned.

Certificate of validity questioned and costs thereon.

(2) In an action for infringement of the copyright in a registered design the Court may certify that the validity of the registration of such design came in question, and if the Court so certifies then in any subsequent action for infringement of such copyright the plaintiff in such subsequent action, on obtaining a final order or judgment in his favour, shall, unless the Court trying such subsequent action otherwise directs, have his full costs and expenses as between solicitor and client.

(3) In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of such trade mark, the Court may certify the same, and if it so certifies then in any subsequent legal proceeding in which such validity comes into question the proprietor of the said trade mark, on obtaining a final order or judgment in his favour, shall, unless the Court trying such subsequent legal proceeding otherwise directs, have his full costs and expenses as between solicitor and client.

133.—The law officer may examine witnesses on oath and administer oaths for that purpose, and may make rules regulating references and appeals to the law officer and the practice and procedure before him under this Act; and in any proceeding before the law officer under 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.

Procedure on appeals to law officer.

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

Exercise of discretionary power by controller.

135.—(1) The controller and the Minister shall, in any proceedings before either of them under this Act, respectively, have power by order to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid, and any such order may be made a rule of court.

Costs and security for costs.

(2) If any party giving notice of any opposition under this Act, or applying to the controller for the revocation of a

[No. 16.] *Industrial and Commercial* [1927.
Property (Protection) Act, 1927.

patent, or giving notice of appeal from any decision of the controller under this Act, neither resides nor carries on business in Saorstát Éireann, the controller, or in case of appeal to the Minister, law officer, or the court, the Minister, law officer, or the court may require such party to give security for the costs of the proceedings or appeal, and in default of such security being given may proceed to treat the proceedings or appeal as abandoned.

Controller may
consult law
officer.

136.—The controller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to the law officer for directions in the matter.

Recognition of
agents.

137.—(1) Whenever under this Act any act has to be done by or to any person in connexion with a patent, design, or trade mark or any procedure relating to a patent or the obtaining thereof or to a design or trade mark or the registration thereof, such act may under and in accordance with rules made under this Act or in particular cases by special leave of the Minister be done by or to an agent of such person duly authorised in the prescribed manner.

(2) Rules under this Act may authorise the controller to refuse to recognise as agent in respect of any business under this Act any person whose name, having been entered in the register of patent agents under this Act, has been removed therefrom.

(3) Rules under this Act may authorise the controller to refuse to recognise as agent in respect of any business under this Act a company or firm of which any director or manager or any partner (as the case may be) is an individual whom the controller could refuse to recognise as an agent.

(4) The controller shall refuse to recognise as agent in respect of any business under this Act any person who neither resides nor has a place of business in Saorstát Éireann.

Inventions, etc.,
contrary to law
or morality.

138.—(1) The controller 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.

(2) An appeal shall lie from the decision of the controller under this section to the court.

Controller to
make annual
reports.

139.—The controller shall, before the first day of September in every year, cause a report respecting the execution by or under him of this Act during the year ending on the previous 31st day of March to be laid before both Houses of the Oireachtas, and therein shall include for the year to which the 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.

Minister may
refer appeals to
court.

140.—Whenever an appeal is made to the Minister under this Act, the Minister may if he thinks fit refer such appeal to the court in lieu of hearing and deciding it himself, but, unless the Minister so refers the appeal, it shall be heard and decided by the Minister and the decision of the Minister shall be final.

Minister may
delegate his
duties under this
Act.

141.—All things required or authorised under this Act to be done by, to, or before the Minister may be done by, to, or before a secretary or an assistant secretary of the Minister or any person authorised in that behalf by the Minister.

Evidence before
controller.

142.—(1) Subject to general rules made under this Act, in any proceeding under this Act before the controller or the Minister the evidence shall be given by statutory declaration in the absence of directions to the contrary; but in any case in which the controller thinks it right so to do, he may take evidence *vivâ voce* in lieu of or in addition to evidence by declaration or allow any declarant to be cross-examined on his declaration. Any such statutory declaration may in the case of appeal be used before the court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

(2) In case any part of the evidence is taken *viva voce*, the controller shall, in respect of requiring the attendance of witnesses and taking evidence on oath, and discovery and production of documents, be in the same position in all respects as a judge of the High Court.

143.—In any legal proceeding in which the relief sought includes alteration or rectification of a register kept pursuant to this Act, the controller shall have the right to appear and be heard, and shall appear if so directed by the court. Unless otherwise directed by the court, the controller in lieu of appearing and being heard may submit to the court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issues, and within his knowledge as such controller, as he shall think fit, and such statement shall be deemed to form part of the evidence in the proceeding.

Appearance
of controller
in proceedings
for rectification.

144.—In all proceedings before the court under this Act the costs of the controller shall be in the discretion of the court, but the controller shall not be ordered to pay the costs of any other party.

Costs of
controller in
court
proceedings.

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

Certificate of
controller to
be evidence

146.—Printed or written copies or extracts, purporting to be certified by the controller or an officer of the controller and sealed with the seal of the controller, of or from patents, specifications, designs, trade marks, and other documents in the Office, and of or from registers and other books kept there, shall be admitted in evidence in all courts and in all legal proceedings without further proof or production of the originals.

Sealed copies of
documents in
office to be
evidence.

147.—Any application, notice, or other document authorised or required to be left, made, or given at the Office or to the controller, or to any other person under this Act, may be sent by post.

Notices may be
sent by post.

148.—Where the last day fixed by this Act for doing anything under this Act falls on any day specified in general rules made under this Act as an excluded day, the rules may provide for the thing being done on the next subsequent day which is not an excluded day.

Excluded days.

149.—(1) If any person is, by reason of infancy, lunacy, or other disability, incapable of making any declaration or doing anything required or permitted by or under this Act, the guardian or committee (if any) of the person subject to the disability, or, if there be none, any person appointed by any court possessing jurisdiction in respect of his property, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the person subject to the disability.

Declarations by
infants,
lunatics, etc.

(2) An appointment may be made by the court for the purposes of this section upon the petition of any person acting on behalf of the person subject to the disability or of any other person interested in the making of the declaration or the doing of the thing.

150.—(1) 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

Offences.

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanour.

(2) If any person falsely represents that any article sold by him is a patented article, or falsely describes any design applied to any article sold by him as registered, or falsely represents a trade mark as registered, he shall be guilty of an offence under this sub-section and shall be liable on summary conviction thereof to a fine not exceeding five pounds.

(3) If any person sells an article having stamped, engraved, or impressed thereon or otherwise applied thereto the word "patent," "patented," "registered," or any other word expressing or implying that the article is patented or that the design applied thereto or the trade mark thereon is registered, he shall be deemed for the purposes of this section to represent that the article is a patented article or that the design applied thereto is a registered design or that the trade mark thereon is a registered trade mark.

(4) Any person who, after the copyright in a design has expired, puts or causes to be put on any article to which the design has been applied the word "registered," or any word or words implying that there is a subsisting copyright in the design, shall be guilty of an offence under this sub-section and shall be liable on summary conviction thereof to a fine not exceeding five pounds.

(5) If any person uses on his place of business, or on any document issued by him, or otherwise, any words suggesting that his place of business is officially connected with, or is, the Office, he shall be guilty of an offence under this sub-section and shall be liable on summary conviction thereof to a fine not exceeding twenty pounds.

Unauthorised
user of State
badges.

151.—Any person who without lawful authority uses in connection with any business, trade, calling, or profession any badge, device, emblem, or flag reserved by law for the use of or commonly used by the State or any officer of the State or any Government Department (or any badge, device, emblem, or flag so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised to use such badge, device, emblem, or flag, shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding twenty pounds, and, in the case of a continuing offence, a further fine not exceeding five pounds for every day on which the offence continues.

International
arrangements.

152.—(1) If any arrangement binding on Saorstát Éireann (whether by reason of its having been made by the Governor-General on the advice of the Executive Council or for any other reason) has been or shall be made with the government of any foreign state for mutual protection of inventions, or designs, or trade marks, then any person who has applied for protection for any invention, design, or trade mark in that state, or the legal representative or assignee of such person shall be entitled to a patent for his invention or to registration of his design or trade mark under this Act in priority to other applicants; and the patent or registration shall have the same date as the date of the application in the foreign state, provided whichever of the following conditions is applicable be duly complied with, that is to say:—

(a) in the case of a patent, the application for protection in Saorstát Éireann shall be made within twelve months after the date of the application for protection in the foreign state or, where such last-mentioned application was pending at the commencement of Part II. of this Act, within twelve months after the date of such commencement, and

(b) in the case of a design, the application for protection in Saorstát Éireann shall be made within four months after the date of the application for protection in the

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

foreign state or, where such last-mentioned application was pending at the commencement of Part III. of this Act, within four months after the date of such commencement, and

- (c) in the case of a trade mark, the application for protection in Saorstát Éireann shall be made within four months after the date of the application for protection in the foreign state or, where such last-mentioned application was pending at the commencement of Part IV. of this Act, within four months after the date of such commencement.

(2) Nothing in this section shall entitle the patentee under a patent or the proprietor of a design or trade mark to recover damages for infringements happening prior to the date on which the complete specification for the patent is accepted or the registration of the design or trade mark is completed (as the case may be).

(3) The patent granted for the invention or the registration of the design or trade mark shall not be invalidated—

- (a) in the case of a patent, by reason only of the publication of a description of, or the use of, the invention; or
(b) in the case of a design, by reason only of the exhibition or use of, or the publication of a description or representation of, the design; or
(c) in the case of a trade mark, by reason only of the use of the trade mark,

in Saorstát Éireann during the period specified in this section as that within which the application may be made.

(4) 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—

- (a) in the case of patents the application shall be accompanied by a complete specification, which, if it is not accepted within the twelve months from the application for protection in the foreign state or the commencement of Part II. of this Act (as the case may require) shall with the drawings (if any) be open to public inspection at the expiration of that period; and
(b) 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.

(5) The provisions of this section shall apply only in the case of those foreign states with respect to which the Governor-General by order made on the advice of the Executive Council declares them to be applicable, and so long only in the case of each state as the order continues in force with respect to that state.

(6) Where it is made to appear to the Governor-General that the legislature of any British dominion, protectorate or territory has made satisfactory provision for the protection of inventions, designs, or trade marks, patented or registered in Saorstát Éireann, it shall be lawful for the Governor-General by order made on the advice of the Executive Council to apply the provisions of this section to that dominion, protectorate or territory with such variations or additions, if any, as may be stated in the order

153.—(1) The Minister may make such general rules and do such things as he thinks expedient, subject to the provisions of this Act,— **Minister may make general rules, etc.**

- (a) for regulating the practice of registration under this Act;
(b) for classifying goods for the purposes of designs and for the purposes of trade marks;
(c) for making or requiring duplicates of specifications, designs, trade marks, drawings, and other documents;

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

- (d) for securing and regulating the publishing and selling of copies, at such prices and in such manner as he thinks fit, of specifications, designs, trade marks, drawings, and other documents;
- (e) for regulating (with the approval of the Minister for Finance) the publication, issue, and sale of the journal and all supplements thereto, reports, and other documents which the controller is by this Act required or authorised to publish or issue, and for regulating the matters to be published in the Journal and such supplements, reports, and other documents respectively;
- (f) for securing and regulating the making, printing, publishing, and selling of indexes to, and abridgments of, specifications, designs, trade marks, and other documents in the Office, and providing for the inspection of such indexes and abridgments and other documents;
- (g) for regulating (with the approval of the Minister for Finance) the presentation of copies of publications made under this Act to patentees and to public authorities, bodies, and institutions at home and abroad;
- (h) for regulating the keeping of the several registers to be kept pursuant to this Act;
- (i) for prescribing any matter or thing referred to in this Act as prescribed or to be prescribed;
- (j) for doing anything which is by this Act authorised or required to be done, or is in this Act referred to as being or to be done, by general rules made under this Act;
- (k) generally for regulating the business of the Office, and all things by this Act placed under the direction or control of the controller, or of the Minister.

(2) General rules made under this section shall whilst in force be of the same effect as if they were contained in this Act.

(3) All rules made in pursuance of this section shall be advertised twice in the Journal, and shall be laid before both Houses of the Oireachtas as soon as practicable after they are made, and if either House of the Oireachtas within the next forty days after any rules have been so laid before that House, resolves that the rules or any of them ought to be annulled, the rules or those to which the resolution applies shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under the rules or to the making of any new rules.

PART VI.—COPYRIGHT.

Copyright.

154.—(1) Subject to the provisions of this Act, copyright shall subsist in Saorstát Éireann for the term hereinafter mentioned in every original literary, dramatic, musical, and artistic work, if—

- (a) in the case of a published work, the work was first published within Saorstát Éireann; and
- (b) in the case of an unpublished work, the author was at the date of the making of the work a citizen of Saorstát Éireann or resident within Saorstát Éireann;

but in no other works, except so far as the protection conferred by this Act is extended by Orders thereunder relating to British dominions and to foreign countries:

Provided that the Governor-General may by Order made on the advice of the Executive Council direct that copyright subsisting in Saorstát Éireann under the provisions of this subsection, in works the authors of which were at the date of the making of the work citizens of a country named in the Order with which no convention relating to copyright and binding on Saorstát Éireann exists and in respect of which no Order has been made under the provisions of section 175 (which relates to power to extend the benefit of this Part of this Act to works first published in a British dominion or foreign country) of

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

this Act, shall be subject to such conditions or formalities (if any) as may be prescribed by the Order: and to such modifications as regards the ownership of the copyright or otherwise as may appear necessary owing to the law of that country.

(2) For the purposes of this Part of this Act, "copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public; if the work is unpublished, to publish the work or any substantial part thereof; and shall include the sole right—

- (a) to produce, reproduce, perform, or publish any translation of the work: provided that such right shall as regards translations into the Irish language cease to exist unless the author of the work or his legal representative shall have within a period of ten years from the date of the first publication of the work published or caused to be published in Saorstát Éireann a translation of the work into the Irish language;
- (b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work;
- (c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise;
- (d) in the case of a literary, dramatic, or musical work, to make any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered,

and to authorise any such acts as aforesaid.

(3) For the purposes of this Part of this Act, publication, in relation to any work, means the issue of copies of the work to the public, and does not include the performance in public of a dramatic or musical work, the delivery in public of a lecture, the exhibition in public of an artistic work, or the construction of an architectural work of art, but, for the purposes of this provision, the issue of photographs and engravings of works of sculpture and architectural works of art shall not be deemed to be publication of such works.

(4) Notwithstanding anything contained in section 174 (which relates to the preservation of existing copyrights) of this Act, paragraph (a) of sub-section (2) of this section shall apply to copyright acquired before the 6th day of December, 1921, as well as to copyright acquired since that date under this Act.

155.—(1) Copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Part of this Act conferred on the owner of the copyright: Provided that the following acts shall not constitute an infringement of copyright:—

Infringement of
copyright.

- (i) any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary;
- (ii) where the author of an artistic work is not the owner of the copyright therein, the use by the author of any mould, cast, sketch, plan, model, or study made by him for the purpose of the work, provided that he does not thereby repeat or imitate the main design of that work;
- (iii) the making or publishing of paintings, drawings, engravings, or photographs of a work of sculpture or artistic craftsmanship, if permanently situate in a public place or building, or the making or publishing of paintings, drawings, engravings, or photographs (which are not in the nature of architectural drawings or plans) of any architectural work of art;
- (iv) the publication in a collection of prose or poetry or of both, *bona fide* intended for the use of schools and so described in the title and in any advertisements issued

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

by the publisher, of passages not exceeding in each case one hundred lines from published literary works not themselves originally published for the use of schools in which copyright subsists: Provided that such passages shall not include passages taken from copyright works within five years from date of first publication and that not more than two of such passages from works by the same author are published by the same publisher in any one book, and that the sources from which such passages are taken are acknowledged;

- (v) the publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except whilst the building is being used for public worship, in a position near the lecturer; but nothing in this paragraph shall affect the provisions in paragraph (i) as to newspaper summaries;
- (vi) save in the case of a work which was first published after the commencement of this Part of this Act, the reading or recitation in public by one person of any reasonable extract from any published work;
- (vii) in the case of a work which was first published after the commencement of this Part of this Act, the reading or recitation in public as part of a lecture, address, sermon, or speech of any reasonable extract from the work.

(2) Copyright in a work shall also be deemed to be infringed by any person who—

- (a) sells or lets for hire, or by way of trade exposes or offers for sale or hire; or
- (b) distributes either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or
- (c) by way of trade exhibits in public; or
- (d) imports for sale or hire into Saorstát Éireann any work which to his knowledge infringes copyright or would infringe copyright if it had been made within Saorstát Éireann.

(3) Save in the case of a work which was first published after the commencement of this Part of this Act, copyright in a work shall also be deemed to be infringed by any person who for his private profit permits a theatre or other place of entertainment to be used for the performance in public of the work without the consent of the owner of the copyright, unless he was not aware and had no reasonable ground for suspecting that the performance would be an infringement of copyright.

(4) In the case of a work first published after the commencement of this Part of this Act, copyright shall also be deemed to be infringed by any person who permits a theatre, hall, room, or other place to be used for the public performance for profit of the work without the consent of the owner of the copyright, unless such person was not aware and had no reasonable grounds for suspecting that the performance would be an infringement of copyright.

(5) Every person who permits a theatre, hall, room, or other place to be used for a performance which is, under the next preceding sub-section of this section, an infringement of copyright shall be guilty of an offence under this section, and shall be liable on summary conviction thereof to a fine not exceeding fifty pounds.

(6) Notwithstanding anything contained in section 174 (which relates to the preservation of existing copyrights) of this Act, paragraph (iv) of sub-section (1) of this section shall apply to copyright acquired before the 6th day of December, 1921, as well as to copyright acquired since that date under this Act.

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

156.—The term for which copyright shall subsist shall, except Term of
copyright. as otherwise expressly provided by this Act, be the life of the author and a period of fifty years after his death:

Provided that at any time after the expiration of twenty-five years or, in the case of a work in which copyright subsisted on the 16th day of December, 1911, thirty years from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale if the person reproducing the work proves that he has given the appointed notice in writing of his intention to reproduce the work, and that he has paid in the appointed manner to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him calculated at the rate of ten per cent. on the price at which he publishes the work; and, for the purposes of this proviso, the Minister may make regulations appointing the mode in which notices are to be given, and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, including (if he thinks fit) regulations requiring payment in advance or otherwise securing the payment of royalties.

157.—If at any time after the death of the author of a literary, dramatic, or musical work which has been published or performed in public a complaint is made to the Minister that the owner of the copyright in the work has refused to republish or to allow the republication of the work or has refused to allow the performance in public of the work, and that by reason of such refusal the work is withheld from the public, the owner of the copyright may be ordered to grant a licence to reproduce the work or perform the work in public, as the case may be, on such terms and subject to such conditions as the Minister may think fit. Compulsory
licences.

158.—(1) Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein: Ownership of
copyright, etc.

Provided that—

(a) where, in the case of an engraving, photograph, or portrait, the plate or other original was ordered by some other person and was made for valuable consideration in pursuance of that order, then, in the absence of any agreement to the contrary, the person by whom such plate or other original was ordered shall be the first owner of the copyright; and

(b) where the author was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright, but where the work is an article or other contribution to a newspaper, magazine, or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine, or similar periodical.

(2) The owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to limitation as to place or otherwise and either for the whole term of the copyright or for any part thereof, and may grant any interest in the right by licence, but no such assignment or grant shall be valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorised agent:

Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him (otherwise than

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

by will) after the passing of this Act, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal personal representatives as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest shall be null and void, but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

(3) Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee as respects the right so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and the provisions of this Act shall have effect accordingly.

Civil remedies
for infringement
of copyright.

159.—(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts, and otherwise, as are or may be conferred by law for the infringement of a right.

(2) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the absolute discretion of the court.

(3) In any action for infringement of copyright in any work, the work shall be presumed to be a work in which copyright subsists and the plaintiff shall be presumed to be the owner of the copyright, unless the defendant puts in issue the existence of the copyright, or, as the case may be, the title of the plaintiff, and where any such question is in issue, then—

(a) if a name purporting to be that of the author of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author of the work;

(b) if no name is so printed or indicated, or if the name so printed or indicated is not the author's true name or the name by which he is commonly known, and a name purporting to be that of the publisher or proprietor of the work is printed or otherwise indicated thereon in the usual manner the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the owner of the copyright in the work for the purposes of proceedings in respect of the infringement of copyright therein.

Rights in respect
of infringing
copies, etc.

160.—All infringing copies of any work in which copyright subsists, or of any substantial part thereof, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of the possession thereof or in respect of the conversion thereof.

Exemption of
innocent
infringer from
certain liabilities.

161.—Where proceedings are taken in respect of the infringement of the copyright in any work and the defendant in his defence alleges that he was not aware of the existence of the copyright in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for suspecting that copyright subsisted in the work.

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

162.—(1) Where the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an injunction to restrain the construction of such building or structure or to order its demolition.

Restriction on remedies in the case of architecture.

(2) Such of the other provisions of this Act as provide that an infringing copy of a work shall be deemed to be the property of the owner of the copyright, or as impose summary penalties, shall not apply in any case to which this section applies.

163.—An action in respect of infringement of copyright shall not be commenced after the expiration of three years next after the infringement.

Limitation of actions.

164.—(1) If any person knowingly—

- (a) makes for sale or hire any infringing copy of a work in which copyright subsists; or
- (b) sells or lets for hire, or by way of trade exposes or offers for sale or hire any infringing copy of any such work; or
- (c) distributes infringing copies of any such work either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or
- (d) by way of trade exhibits in public any infringing copy of any such work; or
- (e) imports for sale or hire into Saorstát Eireann any infringing copy of any such work;

Penalties for dealing with infringing copies.

he shall be guilty of an offence under this Act and be liable on summary conviction thereof to a fine not exceeding forty shillings for every copy dealt with in contravention of this section, but not exceeding fifty pounds in respect of the same transaction; or, in the case of a second or subsequent offence, either to such fine or at the discretion of the court, to imprisonment with or without hard labour for a term not exceeding two months.

(2) If any person knowingly makes or has in his possession any plate for the purpose of making infringing copies of any work in which copyright subsists, or knowingly and for his private profit causes any such work to be performed in public without the consent of the owner of the copyright, he shall be guilty of an offence under this Act, and be liable on summary conviction thereof to a fine not exceeding fifty pounds, or, in the case of a second or subsequent offence, either to such fine, or, at the discretion of the court, to imprisonment with or without hard labour for a term not exceeding two months.

(3) The court before which any such proceedings are taken may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies or plates for the purpose of making infringing copies, be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit.

(4) Nothing in this section shall, as respects musical works, affect the provisions of Part VII. of this Act.

165.—(1) Copies made out of Saorstát Eireann of any work in which copyright subsists which if made in Saorstát Eireann would infringe copyright, and as to which the owner of the copyright gives notice in writing by himself or his agent to the Revenue Commissioners, that he is desirous that such copies should not be imported into Saorstát Eireann, shall not be so imported, and shall, subject to the provisions of this section, be deemed to be included in the table of prohibitions and restrictions contained in section forty-two of the Customs Consolidation Act, 1876, and that section shall apply accordingly.

Importation of copies.

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

(2) Before detaining any such copies or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Revenue Commissioners may require the regulations under this section, whether as to information, conditions, or other matters, to be complied with, and may satisfy themselves in accordance with those regulations that the copies are such as are prohibited by this section to be imported.

(3) The Revenue Commissioners may make regulations, either general or special, respecting the detention or forfeiture of copies the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may, by such regulations, determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) The regulations may apply to copies of all works the importation of copies of which is prohibited by this section, or different regulations may be made respecting different classes of such works.

(5) The regulations may provide for the informant reimbursing the Revenue Commissioners all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention; and may provide for notices under any enactment repealed by this Act being treated as notices given under this section.

(6) The foregoing provisions of this section shall have effect as if they were part of the Customs Consolidation Act, 1876.

Works of joint
authors.

166.—(1) In the case of a work of joint authorship, copyright shall subsist during the life of the author who first dies and for a term of fifty years after his death, or during the life of the author who dies last, whichever period is the longer, and references in this Act to the period after the expiration of any specified number of years from the death of the author shall be construed as references to the period after the expiration of the like number of years from the death of the author who dies first or after the death of the author who dies last, whichever period may be the shorter, and in the provisions of this Act with respect to the grant of compulsory licences a reference to the date of the death of the author who dies last shall be substituted for the reference to the date of the death of the author.

(2) Where, in the case of a work of joint authorship, some one or more of the joint authors do not satisfy the conditions conferring copyright laid down by this Act, the work shall be treated for the purposes of this Act as if the other author or authors had been the sole author or authors thereof:

Provided that the term of the copyright shall be the same as it would have been if all the authors had satisfied such conditions as aforesaid.

(3) For the purposes of this Act, "a work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors.

(4) Where a married woman and her husband are joint authors of a work the interest of such married woman therein shall be her separate property.

Posthumous
works.

167.—(1) In the case of a literary, dramatic, or musical work, or an engraving, in which copyright subsists at the date of the death of the author or, in the case of a work of joint authorship, at or immediately before the date of the death of the author who dies last, but which has not been published, nor, in the case of a dramatic or musical work, been performed in public, nor, in the case of a lecture, been delivered in public, before that date, copyright shall subsist till publication, or performance or delivery

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

in public, whichever may first happen, and for a term of fifty years thereafter, and the proviso to section 156 (which relates to term of copyright) of this Act shall, in the case of such a work, apply as if the author had died at the date of such publication or performance or delivery in public as aforesaid.

(2) The ownership of an author's manuscript after his death, where such ownership has been acquired under a testamentary disposition made by the author and the manuscript is of a work which has not been published nor performed in public nor delivered in public, shall be *prima facie* proof of the copyright being with the owner of the manuscript.

168.—(1) The copyright in every work prepared or published by or under the direction or control of the late Provisional Government of Ireland or any Minister or Department thereof shall, subject to any agreement with the author, belong to the Government of Saorstát Éireann, and shall continue for a period of fifty years from the date of the first publication of the work.

Copyright in
Government
publications.

(2) The copyright in every work prepared, printed, or published (whether before or after the commencement of this Part of this Act) by or under the direction of the Government of Saorstát Éireann or any Minister or Department thereof or by or under the superintendence or authority of the Stationery Office shall, subject to any agreement with the author thereof, belong to the Government of Saorstát Éireann and shall continue for a period of fifty years from the date of the first publication of the work.

169.—(1) Copyright shall subsist in records, perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced, in like manner as if such contrivances were musical works, but the term of copyright shall be fifty years from the making of the original plate from which the contrivance was directly or indirectly derived, and the person who was the owner of such original plate at the time when such plate was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within Saorstát Éireann if it has established a place of business within Saorstát Éireann.

Copyright in
mechanical
musical
instruments

(2) It shall not be deemed to be an infringement of copyright in any musical work for any person to make within Saorstát Éireann records, perforated rolls, or other contrivances by means of which the work may be mechanically performed, if such person proves—

- (a) that such contrivances have previously been made by, or with the consent or acquiescence of, the owner of the copyright in the work; and
- (b) that he has given the prescribed notice of his intention to make the contrivances, and has paid in the prescribed manner to, or for the benefit of, the owner of the copyright in the work royalties in respect of all such contrivances sold by him, calculated at the rate hereinafter mentioned:

Provided that—

- (i) nothing in this provision shall authorise any alterations in, or omissions from, the work reproduced, unless contrivances reproducing the work subject to similar alterations and omissions have been previously made by, or with the consent or acquiescence of, the owner of the copyright, or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the contrivances in question; and
- (ii) for the purposes of this provision, a musical work shall be deemed to include any words so closely associated therewith as to form part of the same work, but shall not be deemed to include a contrivance by means of which sounds may be mechanically reproduced:

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

(3) The rate at which such royalties as aforesaid are to be calculated shall be five per cent. on the ordinary retail selling price of the contrivance calculated in the prescribed manner, so, however, that the royalty payable in respect of a contrivance shall, in no case, be less than a halfpenny for each separate musical work in which copyright subsists reproduced thereon, and, where the royalty calculated as aforesaid includes a fraction of a farthing, such fraction shall be reckoned as a farthing:

Provided that, if, at any time after the expiration of seven years from the commencement of this Part of this Act, it appears to the Minister that such rate as aforesaid is no longer equitable, the Minister may, after holding a public inquiry, make an order either decreasing or increasing that rate to such an extent as in the circumstances may seem just, but any order so made shall be provisional only and shall not have any effect unless and until confirmed by a resolution passed by each House of the Oireachtas; but, where an order revising the rate has been so made and confirmed, no further revision shall be made before the expiration of fourteen years from the date of the last revision.

(4) If any such contrivance is made reproducing two or more different works in which copyright subsists and the owners of the copyright therein are different persons, the sums payable by way of royalties under this section shall be apportioned amongst the several owners of the copyright in such proportions as, failing agreement, may be determined by arbitration.

(5) When any such contrivances by means of which a musical work may be mechanically performed have been made, then, for the purposes of this section, the owner of the copyright in the work shall, in relation to any person who makes the appointed inquiries, be deemed to have given his consent to the making of such contrivances if he fails to reply to such inquiries within the appointed time.

(6) For the purposes of this section, the Minister may make regulations appointing anything which under this section is to be appointed, and appointing the mode in which notices are to be given and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, and any such regulations may, if the Minister thinks fit, include regulations requiring payment in advance or otherwise securing the payment of royalties.

(7) In the case of musical works published before the first day of July 1912 the foregoing provisions shall have effect, subject to the following modifications and additions:—

- (a) the conditions as to the previous making by, or with the consent or acquiescence of, the owner of the copyright in the work, and the restrictions as to alterations in or omissions from the work, shall not apply;
- (b) the rate of two and one-half per cent. shall be substituted for the rate of five per cent. as the rate at which royalties are to be calculated;
- (c) notwithstanding any assignment made before the 16th day of December 1911 of the copyright in a musical work, any rights conferred by the Copyright Act, 1911 or by this Act in respect of the making, or authorising the making, of contrivances by means of which the work may be mechanically performed shall belong to the author or his legal personal representatives and not to the assignee, and the royalties aforesaid shall be payable to, and for the benefit of, the author of the work or his legal personal representatives;
- (d) where the work is a work on which copyright is conferred by an order under this Part of this Act relating to a British dominion or a foreign country, the copyright so conferred shall not, except to such extent as may be provided by the order, include any rights with

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

respect to the making of records, perforated rolls, or other contrivances by means of which the work may be mechanically performed.

(8) Notwithstanding anything in this Act, where a record, perforated roll, or other contrivance by means of which sounds may be mechanically reproduced has been made before the commencement of this Part of this Act, copyright shall, as from such commencement, subsist therein in like manner and for the like term as if this Part of this Act had been in force at the date of the making of the original plate from which the contrivance was directly or indirectly derived:

Provided that—

- (i) the person who, at the commencement of this Part of this Act, is the owner of such original plate shall be the first owner of such copyright; and
- (ii) nothing in this provision shall be construed as conferring copyright in any such contrivance if the making thereof would have infringed copyright in some other such contrivance, if this provision had been in force at the time of the making of the first-mentioned contrivance.

170.—Notwithstanding anything in this Act, it shall not be an infringement of copyright in an address of a political nature delivered at a public meeting to publish a report thereof in a newspaper. Reports of political speeches.

171.—The term for which copyright shall subsist in photographs shall be fifty years from the making of the original negative from which the photograph was directly or indirectly derived, and the person who was owner of such negative at the time when such negative was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within Saorstát Eireann if it has established a place of business within Saorstát Eireann. Copyright in photographs.

172.—(1) This Part of this Act shall apply to designs which though capable of being registered under Part III. of this Act are not used or intended to be used as models or patterns to be multiplied by any industrial process, and the general rules made by the Minister under Part V. of this Act may determine the conditions under which a design shall be deemed to be used for such purposes as aforesaid. Application of this Part of this Act to registered designs.

(2) Subject to the provisions of the foregoing sub-section and save as is otherwise provided in Part VII. of this Act, this Part of this Act shall not apply to designs capable of being registered under Part III. of this Act.

173.—If it appears to the Governor-General of Saorstát Eireann, acting on the advice of the Executive Council, that a British dominion or a foreign country does not give, or has not undertaken to give, adequate protection to the works of Saorstát Eireann authors, it shall be lawful for the Governor-General by Order made on the advice of the Executive Council to direct that such of the provisions of this Part of this Act as confer copyright on works first published within Saorstát Eireann shall not apply to works published after the date specified in the order, the authors whereof are subjects or citizens of such British dominion or foreign country, and are not resident in Saorstát Eireann, and thereupon those provisions shall not apply to such works. Works of foreign authors.

174.—(1) The repeal of the Copyright Act, 1911, by this Act shall not save as is otherwise expressly provided in this Part of this Act add to, derogate from, or otherwise affect any copyright or other right acquired before the 6th day of December, 1921, under or by virtue of the Copyright Act, 1911, or any order made thereunder. Preservation of existing copyrights.

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

(2) Section 4 (which relates to repeals) of this Act shall, in so far as it relates to the repeal of the Copyright Act, 1911, be deemed to have had force and effect as from the 6th day of December, 1921, and this Part of this Act shall be deemed to have had force and effect as from that date: Provided that—

(i) Notwithstanding anything contained in section 163 (which relates to limitation of actions) of this Act an action in respect of an infringement of copyright between the 6th day of December, 1921 and the commencement of this Part of this Act may be commenced within three years after the commencement of this Part of this Act but not later, and

(ii) The provisions of section 172 (which relates to the application of this Part of this Act to registered designs) of this Act shall not have force and effect until the commencement of this Part of this Act.

Power to extend
the benefit of
this Part of this
Act to works
first published
in a British
dominion or
foreign country.

175.—(1) The Governor-General may by Order made on the advice of the Executive Council direct that this Part of this Act (except such parts, if any, thereof as may be specified in the Order) shall apply—

(a) to works first published in a British dominion or a foreign country to which the Order relates, in like manner as if they were first published within Saorstát Éireann;

(b) to literary, dramatic, musical, and artistic works, or any class thereof the authors whereof were at the time of the making of the work subjects or citizens of a British dominion or a foreign country to which the Order relates, in like manner as if the authors were citizens of Saorstát Éireann;

(c) in respect of residence in a British dominion or a foreign country to which the Order relates, in like manner as if such residence were residence within Saorstát Éireann;

and thereupon, subject to the provisions of this Part of this Act and of the Order, this Act shall apply accordingly:

Provided that—

(i.) before making an order under this section in respect of a British dominion or a foreign country (other than a dominion or a country with which a convention relating to copyright and binding on Saorstát Éireann exists) the Governor-General acting on the advice of the Executive Council shall be satisfied that that British dominion or foreign country has made, or has undertaken to make, such provisions, if any, as it appears to the Governor-General acting on the advice of the Executive Council expedient to require for the protection of works entitled to copyright under the provisions of this Part of this Act;

(ii) the order may provide that the enjoyment of the rights conferred by this Part of this Act shall be subject to the accomplishment of such conditions and formalities (if any) as may be prescribed by the order;

(iii) in applying the provision of this Part of this Act as to ownership of copyright, the order may make such modifications as appear necessary having regard to the law of the foreign country;

(iv) in applying the provisions of this Part of this Act as to existing works, the order may make such modifications as appear necessary, and may provide that nothing in those provisions as so applied shall be construed as reviving any right of preventing the production or importation of any translation in any case where the right has ceased by virtue of section 5 of the International Copyright Act, 1886.

(2) An order under this section may extend to all the several countries named or described therein.

Abrogation of
common law
rights.

176.—No person shall be entitled to copyright or any similar right in any literary, dramatic, musical, or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act, or of any other statutory enact-

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

ment for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

177.—(1) In this Part of this Act, unless the context otherwise requires— Definitions and interpretation.

“Literary work” includes maps, charts, plans, tables, and compilations;

“Dramatic work” includes any piece for recitation, choreographic work, or entertainment in dumb show the scenic arrangement or acting form of which is fixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character;

“Artistic work” includes works of painting, drawing, sculpture, and artistic craftsmanship, and architectural works of art and engravings and photographs;

“Work of sculpture” includes casts and models;

“Architectural work of art” means any building or structure having an artistic character or design, in respect of such character or design, or any model for such building or structure, provided that the protection afforded by this Act shall be confined to the artistic character and design, and shall not extend to processes or methods of construction;

“Engravings” include etchings, lithographs, wood-cuts, prints, and other similar works, not being photographs;

“Photograph” includes photo-lithograph and any work produced by any process analogous to photography;

“Cinematograph” includes any work produced by any process analogous to cinematography;

“Collective work” means—

(a) an encyclopædia, dictionary, year book, or similar work, and

(b) a newspaper, review, magazine, or similar periodical, and

(c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated;

“Infringing” when applied to a copy of a work in which copyright subsists, means any copy, including any colourable imitation, made, or imported in contravention of the provisions of this Act;

“Performance” means any acoustic representation of a work and any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument;

“Delivery” in relation to a lecture, includes delivery by means of any mechanical instrument;

“Plate” includes any stereotype or other plate, stone, block, mould, matrix, transfer, or negative used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which records, perforated rolls or other contrivances for the acoustic representation of the work are or are intended to be made;

“Lecture” includes address, speech, and sermon.

(2) For the purposes of this Part of this Act (other than those relating to infringements of copyright), a work shall not be deemed to be published or performed in public, and a lecture shall not be deemed to be delivered in public, if published, performed in public, or delivered in public, without the consent or acquiescence of the author, his executors, administrators, or assigns.

(3) For the purposes of this Part of this Act, a work shall be deemed to be first published within Saorstát Éireann, notwith-

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

standing that it has been published simultaneously in some other place, unless the publication in Saorstát Eireann is colourable only and is not intended to satisfy the reasonable requirements of the public, and a work shall be deemed to be published simultaneously in two places if the time between the publication in one such place and the publication in the other place does not exceed fourteen days, or such longer period as may for the time being be fixed by order of the Executive Council.

(4) Where, in the case of an unpublished work, the making of the work has extended over a considerable period, the conditions of this Part of this Act conferring copyright shall be deemed to have been complied with if the author was during any substantial part of that period a citizen of Saorstát Eireann or a resident within Saorstát Eireann.

(5) For the purposes of the provisions of this Part of this Act as to residence, an author of a work shall be deemed to be a resident in Saorstát Eireann if he is domiciled in Saorstát Eireann, and to be resident in any other state or country if he is domiciled in that state or country.

PART VII.

MISCELLANEOUS PROVISIONS IN RELATION TO
COPYRIGHT.

Delivery of books
to libraries.

178.—(1) The publisher of every book first published in Saorstát Eireann shall, within one month after the publication, deliver, at his own expense, a copy of the book to the trustees of the National Library of Ireland, a copy of the book to the authority having control of the Library of Trinity College, Dublin, three copies of the book for or in accordance with the directions of the authority having control of the National University of Ireland for the use of the respective libraries of the three constituent Colleges of that University, and a copy of the book to the trustees of the British Museum, and such trustees and authority respectively shall give a written receipt for every book so delivered to them:

Provided that the Minister may, on the application of the trustees of the National Library of Ireland, or of the authority having control of the Library of Trinity College, Dublin, or of any of the respective authorities having control of the three constituent Colleges of the National University of Ireland, or of the trustees of the British Museum, make regulations excepting from the provisions of this sub-section in regard to the trustees or authority making the application, publications wholly or mainly in the nature of trade advertisements, or such classes of such publications as may be specified in the regulations, and thereupon it shall not be necessary for the publisher of any publication so excepted to deliver the publication to such trustees or authority or for such trustees or authority to give a receipt therefor, unless as respects any particular publication a written demand for the delivery thereof is made by such trustees or authority.

(2) He shall also, if written demand is made before the expiration of twelve months after publication, deliver within one month after receipt of that written demand or, if the demand was made before publication, within one month after publication, to some address in Dublin named in the demand a copy of the book for, or in accordance with the directions of, the authority having the control of each of the following libraries, namely: the Bodleian Library, Oxford, the University Library, Cambridge, the National Library of Scotland, and the National Library of Wales. In the case of an encyclopædia, newspaper, review, magazine, or work published in a series of numbers or parts, the written demand may include all numbers or parts of the work which may be subsequently published.

(3) The copy delivered to the trustees of the British Museum shall be a copy of the whole book with all maps and illustrations belonging thereto, finished and coloured in the same

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

manner as the best copies of the book are published, and shall be bound, sewed, or stitched together, and on the best paper on which the book is printed.

(4) The copy delivered for the other authorities mentioned in this section shall be on the paper on which the largest number of copies of the book is printed for sale, and shall be in the like condition as the books prepared for sale.

(5) If a publisher fails to comply with this section, he shall be liable on summary conviction to a fine not exceeding five pounds and the value of the book, and the fine shall be paid to the trustees or authority to whom the book ought to have been delivered.

(6) For the purposes of this section, the expression "book" includes every part or division of a book, pamphlet, sheet of letterpress, sheet of music, map, plan, chart or table separately published, but shall not include any second or subsequent edition of a book unless such edition contains additions or alterations either in the letterpress or in the maps, prints, or other engravings belonging thereto.

179.—(1) There shall be kept at the Office a book called the register of artistic works wherein shall be entered the names and addresses of proprietors of the copyright in registered artistic works, notifications of assignments and transmissions of such copyright, and such other matters as may be prescribed.

Registration of
artistic work
defining a design.

(2) The register of artistic works shall be *prima facie* evidence of all matters by this Act directed or authorised to be entered therein.

(3) The controller may (subject to the provisions of this section), on the application made in the prescribed form and manner of any person who is the author of an artistic work defining a design, register such artistic work in the register of artistic works.

(4) An artistic work shall not be registered under this section unless, in the case of a published work, the work was first published after the commencement of this Part of this Act or, in the case of an unpublished work, the work was made after the commencement of this Part of this Act.

(5) An artistic work registered in the register of artistic works shall continue to be so registered so long as copyright subsists therein under this Act and shall on the expiration of such copyright be removed from the register by the controller.

(6) The controller may, if he thinks fit, refuse to register any artistic work presented to him for registration and in particular may refuse to register any such artistic work the use of which would in his opinion be contrary to law or morality.

(7) Any person aggrieved by a refusal of the controller to register an artistic work may appeal, if the refusal is on the ground that the use of the artistic work would be contrary to law or morality, to the law officer or, in any other case, to the Court.

(8) The controller may, on request made in the prescribed manner by the registered proprietor of an artistic work or by some person entitled by law to act in his name, correct any clerical error in or in connection with the registration of such artistic work, or enter in such register any change in the name or address of any person whose name or address is entered in such register in relation to such artistic work, or cancel the registration of such artistic work.

(9) Section 129 (which relates to the power of the court to amend a register) of this Act shall apply to the register of artistic works in like manner in all respects as it applies to the register of designs.

180.—(1) Part VI. of this Act shall apply to an artistic work defining a design if, in the case of a published work, such work was first published after the commencement of this Part of this Act or, in the case of an unpublished work, such work was made after the commencement of this Part of this Act.

Application of
Part VI of this
Act to artistic
work defining a
design.

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

(2) For the purpose of the application under this section of Part VI. of this Act to an artistic work defining a design, "copyright" shall include the sole right—

- (a) to publish the design defined in the work,
- (b) to authorise the industrial application of the design.

(3) Where, in the case of an artistic work defining a design to which by virtue of this section Part VI of this Act applies the author was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person and the design defined in the work is used or intended to be used for an industrial purpose there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain the use of the design for any other industrial purpose.

(4) All the provisions of Part VI of this Act in regard to penalties in relation to infringing copies of works in which copyright subsists shall apply to infringing copies of works in which copyright subsists by virtue of this section.

Register to
be kept by
proprietors of
theatres, etc.

181.—(1) It shall be the duty of the proprietor of every theatre, hall, room, or other place, in which public entertainments are held to keep or cause to be kept in such theatre, hall, room, or place a register, in the form prescribed by the Minister, of all public entertainments held in such theatre, hall, room, or place, and within twelve hours after every such public entertainment to enter or cause to be entered in such register such particulars of the entertainment and of the person holding the same as shall be prescribed by regulations made by the Minister under this section.

(2) Every register kept in pursuance of this section may be inspected at all reasonable times by any officer of the Minister duly authorised by him in that behalf or by any person who is the author of or owner of the copyright in any published work.

(3) The Minister may by Order make regulations prescribing all or any of the following matters, that is to say:—

- (a) the form of the register to be kept in pursuance of this section,
- (b) the particulars to be entered in the register in respect of every entertainment, and of the person holding the same,
- (c) defining the person who is to be deemed, in respect of any particular entertainment, to hold the same.

(4) If any person who is required by this section to keep, or cause to be kept, any such register as aforesaid—

- (a) fails to keep such register or to cause the same to be kept, or
- (b) fails to make or cause to be made in such register within the time prescribed by this section any entry required by or under this section to be made therein, or
- (c) fails to produce such register for the inspection of any person entitled under this section to inspect the same or obstructs or impedes any such person in making such inspection, or
- (d) wilfully or negligently makes or causes or permits to be made in such register any entry which is false or misleading in any material particular,

he shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a penalty not exceeding ten pounds.

(5) For the purposes of this section—

- (a) inspection of a register includes taking copies thereof or of any part thereof, and
- (b) "entertainment" means the presentation of any dramatic work as defined in Part VI. of this Act or the giving of a lecture as similarly defined: Provided that "lecture" shall not for the purposes of this section include sermon.

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

182.—The District Court, upon the application of the owner of the copyright in any musical work, may act as follows: If satisfied by evidence that there is reasonable ground for believing that pirated copies of such musical work are being hawked, carried about, sold, or offered for sale, may by order authorise a member of the *Gárda Síochána* to seize such copies without warrant and to bring them before the court, and the court, on proof that the copies are pirated copies, may order them to be destroyed, or to be delivered up to the owner of the copyright if he makes application for that delivery.

Seizure, etc., of
pirated copies of
musical works.

183.—If any person shall hawk, carry about, sell, or offer for sale any pirated copy of any musical work, every such pirated copy may be seized by any member of the *Gárda Síochána* without warrant on the request in writing of the apparent owner of the copyright in such work, or of his agent thereto authorised in writing, and at the risk of such owner.

Seizure of
pirated copies
on request of
copyright owner.

On seizure of any such copies, they shall be conveyed by such member of the *Gárda Síochána* before the District Court and, on proof that they are infringements of copyright, shall be forfeited or destroyed or otherwise dealt with as the court may think fit.

184.—Every person who prints, reproduces, or sells, or exposes, offers, or has in his possession for sale, any pirated copies of any musical work, or has in his possession any plates for the purpose of printing or reproducing pirated copies of any musical work, shall (unless he proves that he acted innocently) be guilty of an offence under this section punishable on summary conviction, and shall be liable to a fine not exceeding five pounds, and on a second or subsequent conviction to imprisonment with or without hard labour for a term not exceeding two months or to a fine not exceeding ten pounds: Provided that a person convicted of an offence under this section who has not previously been convicted of such an offence, and who proves that the copies of the musical work in respect of which the offence was committed had printed on the title page thereof a name and address purporting to be that of the printer or publisher, shall not be liable to any penalty under this section unless it is proved that the copies were to his knowledge pirated copies.

Penalties for
being in posses-
sion of pirated
copies.

(2) Any member of the *Gárda Síochána* may take into custody without warrant any person who in any street or public place sells or exposes, offers, or has in his possession for sale any pirated copies of any such musical work as may be specified in any general written authority addressed to the superintendent of the *Gárda Síochána* for the district to which the authority relates and signed by the apparent owner of the copyright in such work or his agent thereto authorised in writing, requesting the arrest, at the risk of such owner, of all persons found committing offences under this section in respect to such work, or who offer for sale any pirated copies of any such specified musical work by personal canvass or by personally delivering advertisements or circulars.

(3) A copy of every written authority addressed to a superintendent of the *Gárda Síochána* under this section shall be open to inspection at all reasonable hours by any person without payment of any fee, and any person may take copies of or make extracts from any such authority.

185.—(1) If the District Court is satisfied by information on oath that there is reasonable ground for suspecting that an offence against this Part of this Act is being committed on any premises, the court may grant a search warrant authorising the member of the *Gárda Síochána* named therein to enter the premises between the hours of six of the clock in the morning and nine of the clock in the evening, and, if necessary, to use force for making such entry, whether by breaking open doors or otherwise, and to seize any copies of any musical work or any plates in respect of which he has reasonable ground for suspecting that an offence against this Part of this Act is being committed.

Right of entry
by police for
execution of this
Part of this Act.

(2) All copies of any musical work and plates seized under this section shall be brought before the District Court, and if proved to be pirated copies or plates intended to be used for the

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

printing or reproduction of pirated copies shall be forfeited and destroyed or otherwise dealt with as the court thinks fit.

Penalty for
certain offences.

186.—(1) Any person who shall do or cause to be done any of the following acts, that is to say:—

- (a) fraudulently sign or otherwise affix, or fraudulently cause to be signed or otherwise affixed, to or upon any painting, drawing, or photograph in which copyright shall be subsisting, any name, initials, or monogram; or
- (b) fraudulently sell, publish, exhibit, or dispose of, or offer for sale, exhibition, or distribution any painting, drawing, or photograph having thereon the name, initials, or monogram of a person who did not execute or make such painting, drawing, or photograph; or
- (c) fraudulently utter, dispose of, or put off, or cause to be uttered, or disposed of, any copy or colourable imitation of any painting, drawing, photograph (whether there shall or shall not be copyright subsisting therein) as having been made or executed by the author or maker of the original painting, drawing, or photograph from which such copy or imitation shall have been taken or made; or
- (d) during the life and without the consent of the author or maker of any painting, drawing, or photograph which such author or maker shall have sold or with the possession of which he shall have parted, make or knowingly sell or publish or offer for sale as the unaltered work of such author or maker, any such painting, drawing, or photograph, or any copy thereof with any alteration (whether by way of addition or otherwise) which shall have been made in such painting, drawing, or photograph by any person other than the author or maker thereof after the author or maker shall have sold or parted with the possession thereof,

shall be guilty of an offence under this section and shall upon summary conviction thereof be liable to a fine not exceeding twenty pounds.

(2) On the conviction of any person of an offence under this section the painting, drawing, or photograph or the copies thereof on which the name, initials or monogram shall have been affixed, or the copy or colourable imitation of the painting, drawing, or photograph, or the altered painting, drawing, or photograph (as the case may be) shall be forfeited and shall be delivered to the person in whom the copyright (if any) in such painting, drawing, or photograph is subsisting at the date of the conviction.

(3) In this section the word "photograph" includes photolithograph and any work produced by any process analogous to photography and includes a photographic negative as well as a photographic positive.

Definitions.

187.—In this Part of this Act—

the expression "musical work" means any combination of melody and harmony, or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced; the expressions "pirated musical work" and "pirated copies" respectively mean any musical work written, printed, or otherwise reproduced, without the consent, lawfully given, of the owner of the copyright in such musical work;

the expression "plates" includes any stereotype or other plates, stones, matrices, transfers, or negatives used or intended to be used for printing or reproducing copies of any musical work: Provided that the expressions "pirated copies" and "plates" shall not, for the purposes of this Part of this Act, be deemed to include perforated music rolls used for playing mechanical instruments, or records used for the reproduction of sound waves, or the matrices or other appliances by which such rolls or records respectively are made;

the expression "artistic work," and the word "publication" in relation to any work, and the word "infringing" when applied to a copy of a work in which copyright subsists, have the same meaning as they respectively have in Part VI. of this Act.

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.
FIRST SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter	Short Title	Extent of Repeal
25 & 26 Vict. c. 68.	Fine Arts Copyright Act, 1862.	The whole Act so far as unrepealed.
2 Edw. VII. c. 15.	Musical (Summary Proceedings) Copyright Act, 1902.	The whole Act.
5 Edw. VII. c. 15.	Trade Marks Act, 1905.	The whole Act.
6 Edw. VII. c. 36.	Musical Copyright Act, 1906.	The whole Act.
7 Edw. VII. c. 29.	Patents and Designs Act, 1907.	The whole Act.
1 & 2 Geo. V. c. 46.	Copyright Act, 1911.	The whole Act.
4 & 5 Geo. V. c. 16.	Trade Marks Act, 1914.	The whole Act.
4 & 5 Geo. V. c. 18.	Patents and Designs Act, 1914.	The whole Act.
5 & 6 Geo. V. c. 38.	Copyright (British Museum) Act, 1915.	The whole Act.
9 & 10 Geo. V. c. 79.	Trade Marks Act, 1919.	The whole Act.
9 & 10 Geo. V. c. 80.	Patents and Designs Act, 1919.	The whole Act.

SECOND SCHEDULE.

MAXIMUM FEES.

A.

PATENTS.

	£	s.	d.
1. On application accompanied by provisional Specification	1	5	0
2. On filing complete specification thereafter	2	5	0
3. On application accompanied by complete specification	3	0	0
<i>On application for certificate of renewal—</i>			
* 4. Before the expiration of the 4th year from the date of the Patent and in respect of the 5th year	3	15	0
* 5. Before the expiration of the 5th year from the date of the Patent and in respect of the 6th year	4	10	0
* 6. Before the expiration of the 6th year from the date of the Patent and in respect of the 7th year	5	5	0
* 7. Before the expiration of the 7th year from the date of the Patent and in respect of the 8th year	6	0	0
* 8. Before the expiration of the 8th year from the date of the Patent and in respect of the 9th year	6	15	0
* 9. Before the expiration of the 9th year from the date of the Patent and in respect of the 10th year	7	10	0
* 10. Before the expiration of the 10th year from the date of the Patent and in respect of the 11th year	8	5	0
* 11. Before the expiration of the 11th year from the date of the Patent and in respect of the 12th year	9	0	0
* 12. Before the expiration of the 12th year from the date of the Patent and in respect of the 13th year	9	15	0
* 13. Before the expiration of the 13th year from the date of the Patent and in respect of the 14th year	10	10	0
* 14. Before the expiration of the 14th year from the date of the Patent and in respect of the 15th year	11	5	0
* 15. Before the expiration of the 15th year from the date of the Patent and in respect of the 16th year	12	0	0

*One moiety only of these fees payable on Patents indorsed "Licences of right."

[No. 16.] *Industrial and Commercial* [1927.]
Property (Protection) Act, 1927.

B.

TRADE MARKS.

	£	s.	d.
1. On application not otherwise charged to register a trade mark for one or more articles included in one class	1	0	0
1a. On application not otherwise charged to register a series of trade marks for one or more articles included in one class	1	0	0
1b. On application under Section 123 for leave to register a mark for goods in one class	1	0	0
1c. On application under Section 123 for leave to register a mark for goods in more than one class— In respect of every class	1	0	0
Total fee in no case to exceed £20 for any number of classes.			
2. For registration of a trade mark for one or more articles included in one class	2	0	0
2a. For registration of a series of marks for one or more articles included in one class— For the first mark	2	0	0
And for every other mark of the series	0	5	0
2b. For registration under Section 123 of a mark for goods in more than one class— In respect of every class	2	0	0
Total fee in no case to exceed £40 for any number of classes.			
3. For renewal of registration of a mark at expiration of last registration	2	0	0
3a. For renewal of registration of a series of marks at the expiration of last registration— For the first mark of the series	2	0	0
And for every other mark of the series	0	2	6
3b. For renewal of a mark registered under Section 123 for goods in more than one class— In respect of every class	2	0	0
Total fee in no case to exceed £40 for any number of classes.			

C.

DESIGNS.

	£	s.	d.
1. On application to register one design to be applied to a single article in a class	10	0	
2. On application to register one design to be applied to a set of articles in a class	1	0	0

SAORSTÁT EIREANN.

STATUTORY RULES AND ORDERS.

1927. No. 60.

INDUSTRIAL AND COMMERCIAL PROPERTY (PROTECTION)
ACT, 1927 (COMMENCEMENT) ORDER, 1927.

This Publication may be purchased through any Bookseller, or directly
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Price Three halfpence

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SAORSTAT EIREANN.

RIALACHA AGUS ORDUITHE REACHTULA.
1927. Uimh. 60.ORDU UM AN ACHT MAOINE TIONNSCAIL AGUS
TRACHTALA (COSAINTE), 1927 (TOSACH FEIDHME), 1927.

DE BHRI go n-achtuítear le halt 2 den Acht Maoine Tionnscail agus Tráchtála (Cosaint), 1927 (Uimh. 16 de 1927) go dtiocfadh an tAcht san i ngníomh pé lá no laethanta a ceapfar chuige sin le haon ordú no orduithe ón Ard-Chomhairle, go generálta no maidir le haon Chuid áirithe den Acht san, agus go bhféadfar laethanta deifriúla do cheapa chun Coda deifriúla den Acht san do theacht i bhfeidhm:

AGUS DE BHRI go bhfuil sé oiriúnach go dtiocfadh na Coda uile agus fé seach den Acht san i ngníomh ar na dátaí fé seach a luaidhtear anso ina dhiaidh seo:

ANOIS, i bhfeidhmiú na geomhacht a bronnar ortha le halt 2 den Acht Maoine Tionnscail agus Tráchtála (Cosaint), 1927 (Uimh. 16 de 1927) agus i bhfeidhmiú gach comhachta agus aon chomhachta eile le n-a gevirtar so ar a geumas, ordúfonn an Ard-Chomhairle leis seo mar leanas:—

1.—Féadfar chun gach críche an tOrdú um an Acht Maoine Tionnscail agus Tráchtála (Cosaint), 1927 (Tosach Feidhme), 1927, do ghairm den ordú so.

2.—Baineann an tAcht Léiriúcháin, 1923 (Uimh. 46 de 1923) le léiriú an Orduithe seo fé mar a bhaineann sé le léiriú Achta den Oireachtas.

3.—Tiocfadh na Coda uile agus fé seach den Acht Maoine Tionnscail agus Tráchtála (Cosaint), 1927 (Uimh. 16 de 1927) i ngníomh ar na dátaí fé seach a leanas, sé sin le rá—

Coda VI agus VII an Iadh lá de Lúnasa, 1927;

An Chuid dá ngairmtear “Roimh-rá” agus Coda I go V (agus an dá Chuid sin d’áireamh) agus an Chéad Sceideal agus an Dara Sceideal an Iadh lá de Dheire Fomhair, 1927.

Baile Atha Cliath,
An 27adh lá so d’Iúil, 1927.

SAORSTAT EIREANN.

STATUTORY RULES AND ORDERS.
1927. No. 60.

INDUSTRIAL AND COMMERCIAL PROPERTY (PROTECTION) ACT, 1927 (COMMENCEMENT) ORDER, 1927.

WHEREAS it is enacted by section 2 of the Industrial and Commercial Property (Protection) Act, 1927 (No. 16 of 1927), that that Act shall come into operation on such day or days as may be fixed therefor by any order or orders of the Executive Council, either generally or with reference to any particular Part of that Act, and different days may be fixed for the commencement of different Parts of that Act:

AND WHEREAS it is expedient that the several Parts of the said Act should come into operation on the respective dates hereinafter mentioned:

NOW, the EXECUTIVE COUNCIL in exercise of the powers conferred on them by section 2 of the Industrial and Commercial Property (Protection) Act, 1927 (No. 16 of 1927) and of every and any other power them in this behalf enabling do hereby order as follows:—

1.—This Order may be cited for all purposes as the Industrial and Commercial Property (Protection) Act, 1927 (Commencement) Order, 1927.

2.—The Interpretation Act, 1923 (No. 46 of 1923) applies to the interpretation of this Order in like manner as it applies to the interpretation of an Act of the Oireachtas.

3.—The several Parts of the Industrial and Commercial Property (Protection) Act, 1927 (No. 16 of 1927) shall come into operation on the following dates respectively, that is to say—

Part VI and VII on the 1st day of August, 1927;

The Part entitled “Preliminary” and Parts I to V (both inclusive) and the First and Second Schedules on the 1st day of October, 1927.

Dublin.

This 27th day of July, 1927.

The version of this Order in the Irish language, prepared officially, is printed on the opposite page.