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**THE PATENTS ACT, 2016**

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GOVERNMENT OF ZAMBIA

**ACT**

**No. 40 of 2016**

Date of Assent: 27th December, 2016

**An Act to provide for the protection and administration of patents; to provide for the patentability of inventions; to provide for the process for obtaining letters patent for an invention; to provide for the restriction, publication and communication of patents; promote the use of patented information and technological knowledge; to provide for contractual and compulsory licences; to provide for the use and acquisition of inventions by the Government; to promote and encourage innovative and inventive activities and local generation of technologies; to provide for the protection of utility models and the grant of a utility model certificate; to give effect to the Paris Convention for the Protection of Industrial Property 1883, the Patent Cooperation Treaty 1970, the Harare Protocol on Patents and Industrial Designs adopted on December 10, 1982, and the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994, and any other relevant international treaty or convention to which Zambia is a State Party; to repeal and replace the Patents Act, 1958; and to provide for matters connected with, or incidental to, the foregoing.**

[27th December, 2016

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY PROVISIONS

**1.** This Act may be cited as the Patents Act, 2016, and shall come into operation on such date as the Minister may, by statutory instrument, appoint.

Short title  
and  
commencement

Interpretation	<p><b>2.</b> In this Act, unless the context otherwise requires—</p> <p>“Agency” means the Patents and Companies Registration Agency established under the Patents and Companies Registration Act, 2010;</p> <p>“anticipation” means the prior invention or disclosure of a claimed invention by another person or the inventor’s own disclosure of the claimed invention by publication, sale or offer to sell if that prior invention or disclosure predates the date of the patent application filing;</p> <p>“applicant” means a person who applies for a grant of a patent or utility model certificate, and includes a person making, any other formal application in accordance with this Act;</p> <p>“ARIPO” means the African Regional Intellectual Property Organisation, established by an agreement adopted at Lusaka on 9 December, 1976;</p> <p>“article” includes any substance, material, equipment, machinery or apparatus, whether affixed to land or not;</p> <p>“assessor” means an expert in Intellectual Property or a relevant field appointed by the Registrar;</p> <p>“assignee” means a person who derives title to an invention from a patentee;</p> <p>“authorised person” includes a contractor, subcontractor, firm or corporation that is authorised, in writing, to undertake an activity for non-commercial purposes for or on behalf of the Government;</p> <p>“Board” means the Board of the Agency constituted in accordance with the Patents and Companies Registration Agency Act, 2010;</p> <p>“Budapest Treaty” means the Treaty on the International Recognition of the Deposit of Micro-organisms for the purposes of Patent Procedure established at Budapest on 28 April, 1977, as amended and modified from time to time;</p> <p>“child” has the meaning assigned to it in the Constitution;</p> <p>“commercially exploit” means to use or develop something for business purposes, and includes selling;</p> <p>“compulsory licence” means a licence granted by the Minister, in accordance with, and for the purposes stated in, section <i>ninety-nine</i>;</p> <p>“convention application” means an application for the grant of a patent from a convention country;</p>
Act No. of 15 of 2010	
Act No. 15 of 2010	
Cap. 1	

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- “convention country” means a country or an inter-governmental body which is Party to the Paris Convention;
- “Convention on Bio-Diversity” means the Convention recognising biological diversity, signed in Rio de Janeiro, in 1992, at the Earth Summit;
- “date of lodging” means the date on which a document is lodged or where it is deemed by virtue of any provision in this Act to have been lodged;
- “depository institute” means a scientific institution established in accordance with the Budapest Treaty;
- “designated office” means the national office of, or acting for the state designated by the applicant in accordance with the Patent Cooperation Treaty;
- “DNA” means deoxyribonucleic acid that carries the genetic information in cells and some viruses;
- “elected office” means the national office of, or acting for, the state elected by the applicant in accordance with the Patent Cooperation Treaty;
- “examiner” means an officer appointed in accordance with section *eight*;
- “exclusive licence” means a licence, in writing, signed by or on behalf of a patentee authorising the licensee, to the exclusion of all other persons, to exercise a right that would otherwise be exercisable exclusively by the patentee, and “exclusive licensee” shall be construed accordingly, with the necessary modifications;
- “exploit” means making, importing, offering for sale, selling or using a product or process, and includes stocking up a product for the purpose of offering for sale, selling or using;
- “filing date” means the date of receipt of an application for the grant of a patent which complies with the requirements stipulated in section *twenty-seven*;
- “foreign application” means an application for the grant of a patent or any other protection filed with any other country other than Zambia by an applicant for the grant of a patent in accordance with this Act;
- “genetic resource” means any genetic material of a biological resource containing genetic information having actual or potential value for humanity and includes derivatives, fauna and flora of terrestrial, aquatic and any other origin which

may be used by the inventor to obtain specific practical outputs in any field of human activity or derivative;

“Harare Protocol” means the Protocol for the Protection of Patents, Utility Models and Industrial Designs administered by ARIPO;

“industrial application” means an application capable of being made or used in an industry;

“international application” means an application for a grant of a patent, filed in accordance with section *sixty-two*, which designates Zambia for the national grant of a patent in accordance with the Patent Cooperation Treaty and Regulations, including any other international treaty to which Zambia is a State Party;

“International Bureau” means the International Bureau of the World Intellectual Property Organisation;

“international preliminary examination” means a preliminary and non-binding examination carried out by the International Examination Authority, appointed in accordance with the Patent Cooperation Treaty;

“International Searching Authority” means a patent office appointed by the International Bureau in accordance with Articles 16(3) and 32(3) of the Patent Cooperation Treaty;

“invention” means a solution to a specific problem in a particular field of technology and includes a product or a process;

“inventive step” means a feature of an invention that involves a technical advancement to existing knowledge which makes the invention not obvious to a person skilled in the art;

“inventor” means a person who actually devised the invention, and includes the legal representative of an inventor, but does not include a person to whom an invention has been communicated to from within or outside Zambia;

“legal representative” means a—

- (a) liquidator or receiver of a company;
- (b) person appointed under a power of attorney;
- (c) person, recognised by law, representing a person who has died, becomes bankrupt or assigns that person’s estate; or
- (d) person, recognised by law, representing a child, person of unsound mind or person with a legal disability;

“letters patent” means an instrument that grants the exclusive rights of an invention to an individual or a corporation;

“licensee” means a person who has been permitted by a patentee to exploit the patented article, in accordance with the terms and conditions specified in a licence contract;

“National Institute for Scientific and Industrial Research” means the National Institute for Scientific and Industrial Research established by the establishment of National Institute for Scientific and Industrial Research Regulations, 1998;

S. I No. 73  
of 1998

“national phase” means the period before the expiry of thirty-one months from the priority date when the applicant submits an application for the grant of a patent as provided for in section *sixty-four*;

“non-commercial purposes” means any activity carried out for non-profit purposes;

“novelty” means the newness of an invention both in form and function or performance;

“officer” means an employee of the Agency;

“Paris Convention” means the Convention for the Protection of Industrial Property signed at Paris on March 20, 1883;

“patent” means the letters patent granted for an invention which meets the requirements specified in section *fifteen*;

“patentable” means meeting the requirements specified in of section *fifteen* (1) and being eligible for protection as a patent as provided in that section, and the word “patentability” shall be construed accordingly;

“patented article” means an article in respect of which a patent has been granted, in accordance with section *fifteen*, and which is in force;

“patentee” means a person who is entered in the Register as the holder of a patent, and includes a successor in title;

“patent agent” means a person who is registered as a patent agent in accordance with section *one hundred and fifteen*;

“Patent Cooperation Treaty” means the treaty signed at Washington on June 19, 1970;

“practitioner” has the meaning assigned to it in the Legal Practitioners Act;

Cap. 30

Act No. 15  
of 2010  
Cap. 400

“prior art” means knowledge which is publicly known and used by others or is available, on the date of the invention, to a person of ordinary skill in the art, and includes what would be obvious from that knowledge;

“priority date” means the cut-off date stipulated in section *forty-one*;

“process” includes a method, art, application or procedure for producing, manufacturing, maintaining or improving the quality of a product;

“protected patent” means a patent protected, as specified in section *fifteen*;

“Receiving Office” means a national office or an inter-governmental organisation with which an international application for a grant of a patent has been filed;

“Register” means the Register of Patents established and maintained in accordance with section *ten*;

“Registrar” means the person appointed as Registrar under the Patents and Companies Registration Agency Act, 2010;

“repealed Act” means the Patents Act, 1958;

“specification” means a provisional or complete description of an invention or claim of an invention, as provided in section *thirty-one*, and includes drawings;

“state of the art” means—

(a) all matter, whether a product, process or information about anything, which has been made available or disclosed to the public in Zambia in tangible form or by written or oral disclosure or description, by use or in any other way, prior to the lodging or priority date of the application for the grant of a patent;

(b) matter contained in an application for another patent which was published or became open to public inspection on or after the priority date of that invention if —

(i) that matter was contained in that application for that other patent as lodged, published or opened to public inspection; and

(ii) the priority date of that matter is earlier than that of the invention; or

(c) an invention used secretly but on a commercial scale within Zambia;

“traditional knowledge” means any knowledge, not limited to a specific subject area, technical or medical field associated with genetic resources, originating from a traditional community, individual or group that is the result of intellectual activity and insight in a traditional context and where the knowledge is embodied in the traditional lifestyle of a traditional community or is codified in knowledge systems and passed on from one generation to another;

“utility model” means an intellectual property right with less stringent patentability requirements to protect an invention;

“utility model certificate” means a certificate granted for a utility model in accordance with section *one-hundred and ten*; and

“WIPO” means the World Intellectual Property Organisation established on July 14, 1967.

3. This Act shall bind the Republic.

Act to bind Republic

## PART II

### ADMINISTRATION

4. This Act shall be administered by the Agency.

Administration of Act

5. The seal of the Agency kept in terms of the Patents and Companies Registration Agency Act, 2010, shall be used for the purposes of this Act and the impression made for such purposes shall be judicially noticed.

Seal of Agency Act No. 15 of 2010

6. (1) The Registrar appointed in accordance with the Patents and Companies Registration Agency Act, 2010, shall, in addition to the Registrar’s other functions and powers specified in that Act and any other law, exercise the powers and perform the functions conferred on the Registrar in this Act.

Registrar Act No. 15 of 2010

(2) The Board may delegate the functions and powers of the Agency, specified in this Act, to the Registrar when the Board considers it necessary for the better implementation of this Act.

7. The functions of the Agency are to—

Functions of Agency

(a) receive and process applications for the grant of patents made by a person referred to in section *twenty-three* and the granting of letters patent;

(b) act as a designated or an elected patent office for international applications;

- (c) receive and process applications for the registration of utility models and the granting of utility model certificates, in accordance with this Act;
- (d) act as an elected office for the purposes of an international preliminary examination, in accordance with the Patent Cooperation Treaty; and
- (e) perform any other functions as are necessary or incidental to the carrying out of its functions under this Act.

Appointment  
of other staff

**8.** The Board shall appoint assistant registrars, such number of examiners and other officers as may be necessary for carrying out the provisions of this Act and who shall, subject to the control of the Registrar, have all the powers conferred by this Act on the Registrar.

Non-  
warranty  
and non  
liability

**9.** An examination, investigation or any act undertaken, in accordance with this Act, shall not warrant the validity of such examination, investigation or act and no liability shall be incurred by any member of the Board, Registrar, examiner or any other officer by reason of, or in connection with, any examination, investigation, act or other consequent proceeding.

Register of  
Patents

**10.** (1) The Agency shall establish and maintain a Register of Patents in which shall be entered—

- (a) particulars of patents and patentees;
- (b) particulars of utility models and owners of the utility model;
- (c) notices of matters which are required, in accordance with this Act, to be entered in the Register; and
- (d) such other matters affecting the validity or ownership of patents and utility models, as may be prescribed.

(2) The Register may be established in non-electronic or electronic form or partly in electronic form.

(3) Where the Register is kept wholly or partly in electronic form, reference in this Act to—

- (a) an entry in the Register shall include reference to a record of particulars kept in electronic form;
- (b) particulars being entered in the Register shall include references to the keeping of records in electronic form; and
- (c) the rectification of the Register shall include references to the rectification of the record of particulars kept in electronic form.

**11.** (1) The Registrar may, on application by an applicant for the grant of a patent or a patentee, made in a prescribed manner and form or by an order of the court, cause the Register be rectified by the making of a correction to an entry in the register.

Rectification  
of Register

(2) Where the Registrar requires that a correction be made without any application or order of the court, the Registrar shall give notice of the need to do so, to the applicant or patentee.

(3) An application for the correction of any document entered in the Register, after an application for the grant of a patent has been published or the patent granted, shall be advertised by the applicant within a prescribed period.

(4) When an application to make a correction is advertised, in accordance with subsection (2), any interested person may object to the making of the correction, in a prescribed manner and within a prescribed period.

(5) Where an objection is made in accordance with subsection (4), the Registrar shall notify the applicant of the objection and give the applicant and the person objecting, an opportunity to be heard before determining the matter.

(6) A person aggrieved by the decision of the Registrar may, within a prescribed period after receipt of the decision of the Registrar, appeal to the High Court.

**12.** (1) Subject to this Act, the Register shall, on payment of the prescribed fee, be open for inspection by the public during prescribed hours.

Inspection of  
Register and  
evidentiary  
proof

(2) The Register shall be *prima facie* evidence of any matters required or authorised by or under this Act to be entered in the Register.

(3) A copy of any entry in the Register or an extract from the Register, certified by the Registrar, shall be admitted in evidence without further proof and without production of the original copy.

**13.** (1) The Minister may, by statutory instrument, make regulations for, or with respect to, any matter under this Part that is to be prescribed or necessary for carrying out or giving effect to the registration processes and procedures.

Regulations  
on  
registration  
processes  
and  
procedures

(2) Without limiting the generality of subsection (1), regulations made in accordance with that subsection may be provide for—

- (a) the format of applications for the grant of a patent and registration of a utility model;
- (b) the payment of fees in respect of any matter or anything done or provided for under this Part;

- (c) the procedure to be followed in connection with any application or request to the Registrar or any proceeding before the Registrar;
- (d) the provision of copies of any documents registered in the Register and the certification of such copies;
- (e) the making of searches on the Register, including the times when, and the manner in which, the searches may be made;
- (f) the service of notices and other documents with respect to the Register; or
- (g) any matter required to be provided for in relation to the Register.

Industrial  
Property  
Journal

**14.** (1) The Registrar shall arrange for the periodic publication of an Industrial Property Journal on patents and utility models that are protected in accordance with this Act and any matter which the Registrar may consider desirable relating to such matters.

(2) The Registrar may sell copies of the Industrial Property Journal at such price and in such manner as the Board may approve.

### PART III

#### PATENTABILITY OF INVENTIONS

Conditions  
for  
patenting of  
invention  
and  
protection

**15.** (1) Subject to section *seventeen*, a patent may be granted for an invention which satisfies the following conditions:

- (a) it is new;
- (b) it involves an inventive step; and
- (c) it is capable of industrial application.

(2) A patent granted, which satisfies the conditions specified in subsection (1) and this Act shall be protected for the period specified in section *sixty-five*.

Non-  
patentable  
subject  
matter

**16.** The following inventions shall not be patentable:

- (a) discoveries, scientific theories or mathematical methods;
- (b) schemes, rules or methods for doing business, performing purely mental acts or playing games or doing business;
- (c) literary, dramatic, musical or artistic work or any other artistic creation;
- (d) presentation of information; and
- (e) computer programmes.

- 17.** Despite section *fifteen*, a patent shall not be granted for any of the following inventions and the invention shall be excluded from being protected as specified in section *fifteen* (2):
- Exclusions from patentability
- (a) methods of treatment of the human or animal body by surgery or therapy, as well as diagnostic methods, except in relation to products for use in any of these methods;
  - (b) plant or animal varieties or essentially biological processes for the production of plants or animals other than non biological and microbiological processes and the products of such processes;
  - (c) DNA, including complementary DNA sequences, cells, cell lines and cell cultures and seeds;
  - (d) the whole or part of natural living beings and biological materials found in nature, even if isolated or purified, including the genome or germplasm of any natural living being;
  - (e) new uses of a known product, including the second use of a medicine;
  - (f) juxtaposition of known inventions or mixtures of known products or alteration of the use, form, dimensions or materials, except where in reality they are so combined or merged that they cannot function separately or where their characteristic qualities or functions have been so modified as to produce an industrial result or use not obvious to a person skilled in the art;
  - (g) inventions which contravene or are inconsistent with public order, public morality, principles of humanity and environmental conservation;
  - (h) public health related methods of use or uses of any molecule or other substance, whatsoever used, for the prevention or treatment of any disease which the Minister responsible for health may designate as a serious health hazard or as a life threatening disease;
  - (i) an invention which is frivolous or claims anything obvious or contrary to well established natural laws; or
  - (j) an invention which is traditional knowledge or is an aggregation or duplication of traditional knowledge.
- 18.** (1) An invention shall be considered new if it does not form part of the state of the art immediately before the priority date.
- Novelty

(2) The novelty of an invention shall not be destroyed if disclosure—

(a) of the invention occurred within twelve months preceding the date of filing of the application for the grant of a patent;

(b) was due to, or made in consequence of, the matter having been obtained unlawfully or in breach of confidence by any person—

(i) from the inventor or any other person to whom the matter was made available in confidence by the inventor or who obtained it from the inventor because the person or the inventor believed that the person was entitled to obtain it; or

(ii) from any other person to whom the matter was made available in confidence by any person mentioned in subparagraph (i) or in this subparagraph or who obtained it from any person so mentioned because that person or the person from whom that person obtained it believed that such person was entitled to obtain it;

(c) was made due to, or in consequence of, the inventor displaying the invention at an international exhibition, recognised by the Agency, and the applicant states, on lodging an application for the grant of a patent, that the inventor has notified, in the prescribed manner, that the invention has been so displayed and, within the prescribed period and in accordance with any prescribed conditions, files written evidence in support of the statement; or

(d) was to the public for the purpose of providing the result of a research undertaken by any university, research institution or development institution, within six months preceding the date of lodging an application for the grant of a patent.

Inventive  
step

**19.** An invention shall be considered to involve an inventive step if it is not obvious to a person ordinarily skilled in the art, on the date of filing of the application for the grant of patent or, where priority is claimed, on the priority date validly claimed.

Industrial  
application

**20.** An invention shall be considered to be capable of industrial application if it can be made or used in an industry.

**21.** (1) An invention relating to a micro-biological process or product, which involves the use of a micro-organism which is not available to the public and which cannot be described in the application for a grant of a patent in such a manner as to enable the invention to be carried out by a person skilled in the art, shall not be patented unless—

Patentability  
of micro-  
biological  
process or  
product

- (a) a culture of the micro-organism has been deposited with the depository institution, in accordance with the Budapest Treaty by the date of filing of the application for the grant of a patent;
- (b) the applicant has furnished the Agency, in a prescribed manner, with information on the characteristic of the micro-organism; and
- (c) the applicant has furnished the Agency with the name of the depository institution and the file number of the culture deposited.

(2) The information referred to in subsection (1) shall be submitted by the applicant to the Agency within a prescribed period after the date of filing of the application for the grant of a patent or, if priority is claimed, after the priority date.

(3) The culture of a micro-organism and any information deposited with the depository institution shall be open to inspection on request by a person having the right to inspect the culture and information.

(4) Where a micro-organism, deposited in accordance with subsection (1), is not, for any reason, available at the depository institution where it was deposited, a fresh deposit of the same micro-organism shall be made, by the depositor, accompanied with a signed declaration stating that a fresh deposit of the microorganism has been made and is of the same kind as the one contained in the original deposit.

(5) An interruption in the availability of a micro-organism shall not be considered to have occurred if a fresh deposit, referred to in subsection (4), is made within a period not exceeding three months from the date the depositor is notified of the interruption by the depository institution.

**22.** (1) The Minister may, in consultation with the Agency, by statutory instrument, exclude some inventions, which the Agency considers harmful or offensive to the public, from protection, as a patent, for a period not exceeding two years.

Temporary  
exclusion  
from patent  
protection

(2) The exclusion from protection, referred to in subsection (1), shall not have effect with respect to any pending application for the grant of a patent or with respect to a patent in force at the date of the coming into force of the statutory instrument issued by the Minister in terms of subsection (1).

## PART IV

## PROCESS FOR OBTAINING A PATENT

Persons entitled to apply for grant of patent

- 23.** An application for grant of a patent, may be filed by—
- (a) a person claiming to be an inventor,
  - (b) an assignee of the person claiming to be an inventor;
  - (c) a legal representative of an inventor or assignee;
  - (d) two or more persons who claim to be the inventors, as specified in section *twenty four*; or
  - (e) a successor in title to an inventor or assignee.

Application by joint inventors

- 24.** (1) An application for a grant of a patent may be made by two or more persons who have jointly made an invention.
- (2) An application referred to in subsection (1) shall be made notwithstanding that—
- (a) the inventors did not physically work together when coming up with the invention; or
  - (b) the inventors did not make equal contribution to the creation of the invention.

Naming of inventor

- 25.** (1) A person who creates an invention has the right to be named in an application for the grant of a patent as an inventor notwithstanding the fact that the inventor has assigned or transferred the rights to an invention to another person.
- (2) Despite subsection (1), the inventor may notify the Registrar in writing that the inventor wishes not to be named in the application for the grant of a patent.

Filing of patent application

- 26.** (1) An application for the grant of a patent shall be filed at the Agency, in the prescribed form and manner, accompanied by a prescribed fee.
- (2) An application for the grant of a patent for an invention created jointly by two or more inventors may be filed by one or more than one inventor.
- (3) Where one or more of the inventors, who jointly created an invention cannot be found or reached for purposes of filing the Registrar may, on being satisfied, allow an application to be made with the inclusion of the name or names of the missing inventor or inventors.

(4) The Registrar may, where an invention is made jointly by two or more inventors, but one or more of the inventors refuses or refuse to be included on the application for the grant of a patent, on being satisfied of the proof of such refusal, allow the application to be lodged without the name or names, as the case may be, of the inventor or inventors who have refused to be included.

**27.** (1) An application for the grant of a patent shall contain —

- (a) a request for the grant of a patent;
- (b) a description of the invention;
- (c) one or more claims;
- (d) drawings, where they are referred to in the description or the claim;
- (e) an abstract; and
- (f) any other requirements as may be prescribed.

Contents of  
patent  
application

(2) Where the applicant for the grant of a patent is not the inventor, the request referred to in subsection (1) (a) shall be accompanied by such proof of the applicant's right to apply for a patent as may be prescribed.

**28.** Where an application for the grant of a patent involves an invention which utilises genetic resources or associated traditional knowledge or both, the applicant shall disclose —

- (a) the country of origin of the genetic resources or associated traditional knowledge in accordance with the Convention on Bio-Diversity; and
- (b) the source in the country providing the genetic resources or associated traditional knowledge.

Disclosure  
of  
invention  
involving  
genetic  
resources or  
traditional  
knowledge

**29.** An applicant for the grant of a patent, or any other application referred to in this Act, who is not resident in Zambia, shall file and process the application through a patent agent registered in accordance with section *one-hundred and fifteen*.

Filing of  
application  
by  
non-resident

**30.** An application for a grant of a patent shall be accompanied by a request to grant a patent and shall contain—

- (a) the name of the applicant;
- (b) the name of the inventor;
- (c) the title or subject matter of an invention; and
- (d) any other information, as may be prescribed.

Contents of  
request

**31.** (1) An application for the grant of a patent, other than an international application, shall be accompanied by a complete

Specification

specification or a provisional specification which shall indicate the title of the subject to which the invention relates.

(2) A provisional specification shall give a brief description of an invention for which a grant of a patent is being applied while a complete specification shall give a full and detailed description of the invention.

(3) An international application for the grant of a patent shall be accompanied by a complete specification.

(4) Subject to this Act, a complete specification lodged with the Registrar after the lodging of a provisional specification, may include claims, not included in the provisional specification, in respect of developments or additions to the invention, which the applicant would be entitled to make in a separate application for the grant of a patent.

(5) Where a complete specification does not accompany an application for the grant of a patent at the time of filing, the applicant shall lodge the specification, within a period not exceeding twelve months from the date of filing of the application or within such further period, which period shall not exceed three months as the Registrar may, in writing, allow upon payment of a prescribed fee.

(6) If the applicant does not lodge a complete specification within the period specified in subsection (5), the application for the grant of a patent shall lapse and the invention shall form part of the prior art.

Disclosure  
and  
description  
of invention

**32.** (1) A complete specification shall—

- (a) describe the invention fully or in a manner sufficiently clear, concise and complete for the invention to be evaluated, carried out, performed or worked on by a person having ordinary skill in the art to which the invention relates;
- (b) disclose the best method or mode known to the applicant of performing, working on or carrying out the invention;
- (c) end with one or more claims defining the subject matter for which protection is claimed or sought; and
- (d) where the invention relates to a chemical product or process, include a description of internationally recognised chemical denomination of the claimed product or of the product obtainable by the claimed process.

(2) Where an application for the grant of a patent is for an invention which is a microbiological process or product, involving

the use of a micro-organism which cannot be sufficiently disclosed in the specification, in such a way as to enable the invention to be carried out by a person skilled in the art and such material is not available to the public, the specification shall be supplemented by a deposit of such material with an international depository institution established in accordance with the Budapest Treaty.

**33.** (1) An application for a grant of a patent may contain one or more claims which shall define, in a prescribed manner, the issues specified in subsection (2). Claim

(2) A claim contained in an application for a grant of a patent shall—

(a) define the subject matter of the invention for which the protection is sought;

(b) be clear and concise;

(c) be supported by the description of the invention or based on the matter described in the specification; and

(d) relate to one invention only or to a group of inventions which are so linked as to form a single inventive concept.

**34.** (1) Where an applicant for a grant of a patent makes reference to drawings in a description or claim, such drawings shall accompany the application at the date of filing. Drawings

(2) Where drawings referred to in subsection (1) are not submitted by the applicant at the time of filing the application, the Registrar shall notify the applicant to lodge such drawings within a period not exceeding three months from the date of notification.

(3) If an applicant does not comply with the notification referred to in subsection (2), the Registrar shall proceed with processing the application and the drawings referred to in the description or claim shall be considered to be non-existent.

**35.** An abstract shall consist of a summary of a disclosure of an invention as contained in the description and shall merely serve the purpose of providing technical information and not as an interpretation of the scope of the protection sought. Abstract

**36.** (1) An application for a grant of a patent shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept. Unity of invention

(2) Where several independent inventions, which do not form a single general inventive concept, are claimed in one application, the Registrar may require that the application for the grant of a patent be restricted to a single invention.

(3) The granting of a patent on an application that did not comply with the requirements of unity of invention shall not be a ground for the invalidation or revocation of the patent.

Filing date

**37.** (1) An application for the grant of a patent for an invention shall be assigned a filing date by the Registrar.

(2) The Registrar shall assign, as the filing date of an application, the date on which the applicant has satisfied the requirements of this Act.

(3) Where the Registrar finds that, on the face of it, the application for the grant of a patent does not fully comply with the requirements of this Act at the time of filing, the Registrar shall request the applicant to file the necessary correction, within a prescribed period, before the application is assigned a filing date.

(4) Where the applicant complies with the request referred to in subsection (3) the Registrar shall assign, as the filing date of an application for the grant of a patent, the date on which the corrections are lodged.

(5) Where the applicant does not comply with the request referred to in subsection (3) within the prescribed period, the Registrar shall consider the application for the grant of a patent not to have been filed and the invention shall form part of the prior art.

(6) Where an applicant complies with the request referred to in section *thirty-four* (2), the Registrar shall assign, as the filing date for the application, the date the applicant lodges the drawings.

(7) Where an applicant for the grant of a patent does not comply with the request referred to in section *thirty-four* (2), within the prescribed period, the Registrar shall assign, as the filing date, the date immediately after the lapse of the prescribed period and shall consider the omitted drawings as non-existent.

(8) Where an applicant for the grant of a patent makes a request to make corrections to the application, the Registrar shall assign, as the filing date of the application, the date on which an applicant lodges the corrections, provided such corrections are lodged not later than three months after the filing of the application.

First to file rule

**38.** Where two or more persons, separately and independently, make the same invention and each of them separately files an application for the grant of a patent, the right to the patent for such invention shall belong to the person whose application has the earliest filing date, or if priority is claimed, the earliest priority date.

Fresh application to be ante-dated

**39.** (1) Where an application for the grant of a patent has been lodged with the Registrar, and before it is accepted, a fresh application is made, in a prescribed manner, by the same applicant

making reference to parts of the matter disclosed in the earlier application, the Registrar may direct that the fresh application be ante-dated to a date not earlier than the date on which the earlier application was lodged with the Registrar

(2) A patent granted as a result of a fresh application, referred to in subsection (1), shall not be revoked or invalidated on grounds only that the invention claimed in the fresh application is not new, as specified in section *fifteen*, having regard to the matter disclosed in the earlier application lodged with the Registrar.

**40.** (1) At any time, after an application for the grant of a patent has been lodged and before it is published, the Registrar may, at the request of the applicant, made in the prescribed manner, direct that the application be post-dated or ante-dated, as the case may be.

Post-dating  
or ante  
dating of  
application

(2) The Registrar shall not direct the post-dating of an application for the grant of a patent, referred to in subsection (1), to a period exceeding six months from the date on which the application was lodged or direct the ante-dating of an application claiming priority to a date later than the date the application could have been lodged.

(3) The Registrar shall not post-date an application for the grant of a patent where priority has been claimed by the applicant, in Zambia or elsewhere, or the applicant's successor or predecessor in title, in a subsequent application which leaves any rights outstanding.

**41.** (1) Subject to this Act, the priority date of an invention, to which an application for the grant of a patent relates, shall be the date on which the application was first filed in the convention country.

Priority date

(2) Where priority is claimed in an application for a grant of a patent, as specified in subsection (1), from one or more prior applications, in a convention country or otherwise, and the invention claimed in the application is based on matter disclosed in one or more of any such prior applications, the priority date of the invention shall be the date of lodging of the earliest of such prior applications in which that matter was disclosed in so far as it is based on such earliest application.

(3) An invention claimed in an application for a grant of patent may have one or more priority dates.

(4) A priority date of an invention shall be the earliest priority date claimed in an application, until the contrary is proved.

(5) In determining whether an invention claimed in an application is based on matter disclosed in a prior application for a grant of a patent, or a prior application in a convention country, regard shall be had to the disclosures contained in all documents lodged at the same time as, and in support of, that prior application in a convention country.

Right of  
priority

**42.** (1) An application for a grant of a patent, accompanied by a complete specification, may claim priority from—

- (a) the date of filing of a prior application for the grant of a patent relating to the same subject matter of an invention, accompanied by a provisional specification;
- (b) the date of filing of a prior application for the grant of a patent relating to the same subject matter of an invention, accompanied by a complete specification; or
- (c) the date of filing an application for the grant of a patent in a convention country relating to the same subject matter, except that—
  - (i) in the case of an application for the grant of a patent claiming priority in terms of paragraph (a) or (b), the prior application was lodged not earlier than twelve months before payment of the prescribed fee or not earlier than fifteen months before the date of the application claiming priority;
  - (ii) in the case of an application for the grant of a patent claiming priority in terms of paragraph (c), the application in the convention country was lodged not earlier than twelve months before the convention application and was the first application in any convention country in respect of the invention; or
  - (iii) the applicant, in the application for the grant of a patent claiming priority, is the owner of the prior application for the grant of a patent referred to in paragraph (a) or (b) or of the application in the convention country referred to in paragraph (c) or the applicant has acquired the right to claim priority in Zambia.

(2) Where a subsequent application for the grant of a patent is filed in a convention country following an earlier application in respect of the same invention, such subsequent application shall be

considered to be the first application in that country in respect of that invention if, at the time of lodging the application—

- (a) the previous application had been withdrawn, abandoned or refused without having been opened to public inspection;
- (b) no priority rights have been claimed on the basis of the first application; and
- (c) no rights are outstanding in that convention country in connection with an earlier application.

(3) An application which has been withdrawn, abandoned or refused shall not, after the lodging of a subsequent application relating to the same subject matter, be capable of supporting a claim for priority rights, under this section, unless such rights are outstanding in Zambia or in any convention country in connection with the first application.

(4) Where a person makes an application for the grant of a patent and the application is—

- (a) in accordance with the terms of a treaty subsisting between any two or more convention countries, equivalent to an application duly made in anyone of those convention countries; or
- (b) in accordance with the law of any convention country, equivalent to an application made in that convention country;

the person shall, for the purposes of this section, be considered to have applied in a convention country.

(5) Where priority is not claimed from an application for the grant of a patent, accompanied by a provisional specification, within the period specified in subsection (1) (c) (i), the application lapses.

**43.** (1) Subject to this section, a person resident in Zambia shall not, without the written authority of the Registrar, file or cause to be filed an application for a grant of a patent outside Zambia, unless—

- (a) an application for a patent for the same invention has been filed with the Agency not less than six months before the filing of the application outside Zambia; and
- (b) there are no directions prohibiting publication or communication issued by the Registrar as provided for in section *ninety-four*, or such directions have been revoked.

Restrictions  
on patent  
applications  
outside  
Zambia

(2) Subsection (1) does not apply to an application which has first been filed in a country outside Zambia by a person not resident in Zambia.

(3) A person who contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Information concerning corresponding foreign application

**44.** (1) A person making an application for the grant of a patent shall fully disclose and provide to the Registrar, accurate and up to date information concerning corresponding foreign applications from the date of filing.

(2) Where a person making an application for the grant of a patent fails or neglects to comply with the requirements specified in subsection (1) the Registrar may reject the application or where such failure or neglect is discovered after the patent has been granted, the Registrar may revoke the patent.

(3) A person making an application for the grant of a patent shall, at the request of the Registrar, furnish the Registrar with the date and number of any foreign application for a patent or other title of protection filed by the applicant with any other country relating to the same invention as the one claimed in the foreign application for the grant of a patent lodged with the Registrar.

(4) A person making an application for the grant of a patent shall, at the request of the Registrar, furnish the Registrar with the following documents relating to any foreign application:

(a) a copy of any communication received by the applicant concerning the results of any search or examination carried out in respect of a foreign application and in which publications or other documents establishing the start of the art or prior art are mentioned;

(b) a copy of the patent or other title of protection granted on the foreign application; and

(c) a copy of any final decision rejecting the foreign application or refusing the grant requested in the application.

(5) A person making an application for the grant of a patent shall, at the request of the Registrar, furnish the Registrar with a copy of any decision revoking or invalidating the patent or any other title of protection granted to the applicant on the basis of the foreign application for the grant of a patent.

(6) The documents furnished in accordance with this section shall merely serve the purpose of facilitating the evaluation of novelty and inventive step claimed in the application filed with the Registrar or in the patent granted on the basis of that application.

(7) A person making an application for a grant of a patent shall have the right to submit comments on the documents furnished in accordance with this section.

**45.** (1) The Registrar may reject, in a prescribed manner, an application for the grant of a patent, where the Registrar considers the—

Refusal of application in certain cases

- (a) application to be frivolous, in that it claims, as an invention, something contrary to well established natural laws;
- (b) use of the invention, claimed in the complete specification, would encourage offensive, immoral or antisocial behaviour;
- (c) application claims, as an invention, a substance capable of being used as food or medicine which is a mixture of known ingredients possessing only the aggregate of the known properties of the ingredients; or
- (d) application claims, as an invention, a process producing a substance by mere admixture.

(2) Despite subsection (1), the Registrar may, where the Registrar considers that the grounds for refusal of an application under this section can be addressed by amendment, request the applicant to amend the application accordingly.

(3) A person aggrieved by the decision of the Registrar, made in accordance with subsection (1) may, within three months of receiving the decision, appeal to the High Court.

**46.** (1) An applicant for a grant of a patent for an invention may amend the description, claims or drawings of an application, in the prescribed manner, on the applicant's own volition, provided that the amendment shall not go beyond the disclosure in the initial application.

Amendment of patent application

(2) Where an applicant for the grant of a patent makes an amendment, as provided in subsection (1), but goes beyond the earlier disclosure, the Registrar shall notify the applicant to exclude, within a prescribed period, the additional matter before the Registrar proceeds with the application.

(3) Where an applicant fails to comply with a notification, as provided in subsection (2), the Registrar shall, in examining the amended application, ignore the additional matter and notify the applicant accordingly.

(4) Where a request for an amendment of a description, claim or drawings is made by an applicant, after the Registrar has accepted an application for the grant of a patent, the Registrar shall notify an applicant, making the request, to advertise the request in the Industrial Property Journal, within a prescribed period.

(5) Where the request, referred to in subsection (4), has been advertised, by the applicant for the grant of a patent, any interested person may oppose the request within the prescribed period and manner.

(6) Where opposition is made, as provided in subsection (5), the Registrar shall decide the matter.

(7) A person aggrieved by the decision of the Registrar, made in accordance with subsection (6), may, within three months of receiving the decision, appeal to the High Court.

(8) The Registrar may, without an application for amendment, amend a specification and abstract contained in an application for a patent so as to acknowledge a registered trade mark, where no such acknowledgment has been made by the applicant.

Correction of  
errors in  
documents

**47.** (1) The Registrar may, on request by an applicant, authorise the correction of a clerical error in a document filed with the Agency.

(2) Where a request for the correction of an error, referred to in subsection (1) concerns the description, claim or drawings, the correction shall be obvious and immediately evident that nothing else is intended than what is offered as a correction.

(3) A request for the correction of a clerical error, as specified in subsection (1), shall be made by the applicant in a prescribed manner and on payment of a prescribed fee.

(4) Where it is proposed by the Registrar that a correction be made, otherwise than upon a request referred to in subsection (3), the Registrar shall give notice of the proposed correction to the applicant for the grant of a patent.

Division of  
application

**48.** (1) An applicant for the grant of a patent may divide the initial application into two or more divisions, except that each divisional application shall not go beyond the disclosure in the initial application.

(2) Each application dividing an initial application, as provided in subsection (1), shall be entitled to a filing date and, where appropriate, the priority date of the initial application.

**49.** A person making an application for the grant of a patent for an invention may, at any time before the grant, notification of rejection or refusal to grant the patent, withdraw the application, in a prescribed manner, upon payment of a prescribed fee.

Withdrawal  
of  
application

**50.** (1) If a complete specification is not lodged within twelve months from the date of filing of an application for the grant of a patent, the application lapses unless—

Lapse of  
application

- (a) an appeal has been lodged in respect of the application;
- (b) the period within which such appeal may be lodged has not expired; or
- (c) the delay in accepting the specification was not due to any neglect on the part of the applicant.

(2) Despite subsection (1), where an application is made for an extension of the period for the acceptance of a complete specification, the Registrar may grant an extension for a period not exceeding three months, upon payment of a prescribed fee.

## PART V

### EXAMINATION, PUBLICATION AND OPPOSITION

**51.** (1) Where a person making an application for the grant of a patent has paid the prescribed fee and the application has not lapsed, refused, withdrawn or treated as withdrawn by the Registrar, the Registrar shall conduct a formalities examination to ascertain compliance of the application with this Act and its regulations.

Examination  
for  
compliance  
with  
requirements

(2) If an application for the grant of a patent is found, after an examination, referred to in subsection (1), to comply with the requirements of this Act, the Registrar shall cause to be conducted a prior art search.

(3) Where the Registrar is of the opinion, after conducting an examination, referred to in subsection (1), that an application is not compliant with the requirements of this Act, the Registrar shall notify the applicant, in writing, to make relevant amendments to the application, within a prescribed period.

(4) Where the applicant fails to, after the notification referred to in subsection (3), make the relevant amendments, the Registrar shall, in writing, refuse the application.

Prior art  
search

**52.** (1) The Registrar may, where the Registrar considers it necessary, refer an application for the grant of a patent, examined in accordance with section *fifty-one*, to any other International Searching Authority, for a novelty search, upon payment of a prescribed fee, within a prescribed period.

(2) The Registrar shall, where the applicant fails to pay the prescribed fee, within the prescribed period, for a novelty search to be conducted, as provided in subsection (1), reject the application for a grant of a patent.

(3) The International Searching Authority, referred to in subsection (1), shall be required to make and submit a report on its findings to the Registrar.

(4) Where the report, referred to in subsection (3), makes reference to documents lodged in a convention country but not lodged with the Registrar, and the Registrar considers such documents relevant, the Registrar shall notify the applicant and request the submission of such documents, within a prescribed period.

(5) If the applicant fails to submit the documents, as specified in subsection (4), the Registrar shall reject the application.

(6) Where, on considering the report referred to in subsection (3), the Registrar is of the opinion that the invention claimed in a complete specification is not an invention in accordance with section *fifteen*, the Registrar shall notify the applicant, in a prescribed manner, and request the applicant to provide proof, to the satisfaction of the Registrar, within a prescribed period, that the subject matter of the claim constitutes a patentable invention.

(7) If an applicant fails to provide proof, as specified in subsection (6), the Registrar shall reject the application for the grant of a patent.

(8) A person aggrieved with the decision of the Registrar, made in accordance with this section, may, within three months of receiving the decision, appeal to the High Court.

Examination  
for  
compliance  
to substance

**53.** (1) Subject to subsection (2), an applicant for a grant of a patent shall, within a prescribed period, request the Registrar, in a prescribed manner and upon payment of a prescribed fee, to examine the application for compliance to substance as specified in section *fifteen*.

(2) Notwithstanding subsection (1), the Registrar may, on the Registrar's own motion, conduct or cause to be conducted an examination.

(3) Where an applicant for the grant of a patent fails to make a request, referred to in subsection (1), or the Registrar does not, on the Registrar's own motion, conduct or cause to be conducted an examination, as provided in subsection (2), the Registrar shall treat the application as withdrawn.

(4) The Registrar may, where the Registrar considers it necessary, refer an application for the grant of a patent, examined in accordance with subsection (1), to any other International Examination Authority, for a patentability search.

(5) The International Examination Authority, referred to in subsection (4), shall be required to make and submit to the Registrar a report on its findings.

(6) Where the Registrar decides to refer an application for the grant of a patent for an international examination, as specified in subsection (4), the Registrar shall notify the applicant, in the prescribed manner, and request the applicant to pay a prescribed fee within a prescribed period.

(7) Where the applicant fails to pay the prescribed fee as provided in subsection (6), the Registrar shall consider the application for the grant of a patent to have been withdrawn.

(8) Where, on considering the report referred to in subsection (5), the Registrar is of the opinion that the application does not meet the requirements provided in section *fifteen*, the Registrar shall notify the applicant, in a prescribed manner, and request the applicant to make the necessary amendments to the application, to the satisfaction of the Registrar, within a prescribed period.

(9) If the applicant fails to make the necessary amendments, referred to in subsection (8), within a prescribed period, the Registrar shall consider the application as abandoned.

(10) A person aggrieved with the decision of the Registrar, made in accordance with this section, may, within three months of receiving the decision, appeal to the High Court.

(11) Subject to section *fifty*, where the Registrar is of the opinion that the application, and the invention to which it relates, meets the requirements of this Act, the Registrar shall issue or cause to be issued an acceptance of the application for the grant of the patent, in a prescribed manner.

**54.** Subject to this Act, the Registrar shall publish the acceptance of an application for the grant of a patent in the Industrial Property Journal, as soon as practicable upon payment of the prescribed fee.

Publication  
of  
acceptance

Inspection  
of  
application

**55.** (1) Subject to section *ninety-four*, an application for the grant of a patent and all accompanying documents shall, on payment of the prescribed fee, be open for inspection by the public during prescribed hours, after the Registrar has accepted and published the application in accordance with section *fifty-four*.

(2) Where an application for the grant of a patent, which claims a priority date, is open to inspection, as specified in subsection (1), any other application from which such application claims priority shall equally be open for inspection in a like manner.

Opposition  
to  
grant of  
patent

**56.** A person, including the State, may oppose the grant of a patent at any time, within a period of three months from the date an application for a grant of a patent is advertised, or within such further period as the Registrar may allow, and before the sealing of the patent, by filing a written notice of opposition to the Registrar, stating any of the following grounds:

- (a) that the applicant is not entitled in accordance with section *twenty-three*, to make an application for the grant of a patent;
- (b) that the person making the application or the person through whom the applicant claims an invention, wrongfully obtained the invention or any part of it from the person opposing the grant;
- (c) that an invention claimed in a complete specification is also claimed in another complete specification published on or before the priority date of an applicant's claim and filed in pursuance of an application for a grant of a patent and has a priority date which is earlier than that of an applicant's claim;
- (d) that an invention claimed in a complete specification is not new as it was publicly known or publicly used in Zambia or elsewhere before the priority date of that claim;
- (e) that an invention claimed in a complete specification is obvious and does not involve any inventive step;
- (f) that the subject matter of a claim in a complete specification is not an invention, is not patentable or is excluded from patent protection in accordance with this Act;
- (g) that an invention claimed in the complete specification does not have any industrial use or application;
- (h) that the complete specification does not sufficiently describe the invention and the best method or manner in which it is to be performed;

- (i) that, the claims in the complete specification do not sufficiently define the subject matter for which protection is sought;
- (j) that an invention described in a complete specification is not the same with the one described in a provisional specification;
- (k) that in the case of a convention application, the application was not made within twelve months from the date of the first application for protection of an invention made in a convention country by the applicant or a person from whom the applicant derives title;
- (l) that the complete specification does not disclose or wrongly mentions the source or the geographical origin or biological material used for the invention;
- (m) that an invention claimed the complete specification is anticipated, having regard to the knowledge, oral or otherwise, available within any traditional community in Zambia or elsewhere;
- (n) that the application is frivolous in that it claims an invention which is contrary to well established natural laws;
- (o) that the use of the invention would be contrary to law or morality;
- (p) that the application for the grant of a patent contains a material misrepresentation or a false statement which the patentee knew of at the time when the declaration was made;
- (q) that the application for a grant of a patent is in contravention of the rights of the person giving such notice or of any persons under or through whom the person claims;
- (r) that an application for the grant of the patent does not satisfy the requirements of this Act; or
- (s) that the application is for an invention which is traditional knowledge.

**57.** (1) A person shall file, with the Registrar, a notice opposing the grant of a patent which shall be accompanied by a statement of the particulars of the facts alleged in support of any of the stated grounds opposing the grant.

Opposition  
procedure  
for grant of  
patent

(2) Where an applicant for a grant of a patent wishes to contest a notice opposing the grant of a patent, as specified in subsection (1), the applicant shall, within the prescribed period or any such further period as the Registrar may allow, file, with the Registrar, a counterstatement, setting out particulars of the grounds on which the notice is contested.

(3) Any particulars, referred to in subsection (2), may be amended with the express permission of the Registrar.

(4) Evidence shall not be admitted to prove that a ground on which any particular, referred to in subsection (2), has not been filed, except with the express permission of the Registrar.

(5) An opposition to the grant of a patent, made in accordance with section *fifty-six*, shall be heard and determined by the Registrar.

(6) Any person aggrieved with the decision of the Registrar with respect to an opposition to the grant of a patent may appeal to the High Court.

## PART VI

### INVENTIONS BY EMPLOYEES

Invention by  
employee

**58.** (1) Subject to this Act or a contract of employment or service, the right to an invention made by an employee, in the performance of such employee's contract, shall belong to the employer or the person who commissioned the work, as the case may be, except that, where the invention acquires an economic value much greater than the parties could reasonably have foreseen at the time of concluding the contract, the employee shall be entitled to an equitable remuneration to be agreed upon by the parties or in default, to be determined by the High Court.

(2) Where an employee, whose employment or service contract does not require the employee to engage in any inventive activity, makes an invention using resources or means placed at the employee's disposal by the employer, the right to the grant of a patent for such invention shall belong to the employer, subject to any provision to the contrary in the contract.

(3) An invention, made by an employee without any relation to an employment or service contract, and without the use of the employer's resources, shall belong to the employee.

(4) In determining equitable remuneration, as referred to in subsection (1), the High Court shall, among other things, take into account the following:

- (a) the nature of the employee's duties, the employee's remuneration and any other rights conferred on the employee by contract or this Act;
- (b) the effort and skill which the employee devoted to making the invention;
- (c) the effort and skill which any other person contributed to the making of the invention; and
- (d) any contribution made by the employer in making the invention.

(5) The rights conferred on an employee, in accordance with this Part, shall not be restricted by contract.

**59.** (1) The provisions of section *fifty-eight* shall, with the necessary modifications and subject to other written laws, apply to a Government employee.

Invention by  
Government  
employee

(2) In this section, “Government employee” includes a person employed in a Government ministry, department or unit, statutory body, local authority or any other Government agency.

**60.** A dispute arising between an employer and an employee, in respect of an invention made by an employee during the subsistence of a contract of employment or service, shall be determined by the High Court.

Disputes of  
invention by  
employee

## PART VII

### INTERNATIONAL APPLICATIONS FOR A GRANT OF PATENT

**61.** (1) The Agency shall, in respect of an international application for a grant of a patent in accordance with the Patent Cooperation Treaty, act as a receiving, designated or elected office.

Patent  
Cooperation  
Treaty

(2) Where an international application for a grant of a patent is filed with the Agency by a national or resident of Zambia, the Agency shall act as the receiving office.

**62.** (1) An international application for the grant of a patent shall be considered to be an application filed with the Registrar and shall be processed in accordance with this Act and regulations made in accordance with the Act.

Procedure  
relating to  
international  
application

(2) Notwithstanding subsection (1), a patent application, made in accordance with the Patent Cooperation Treaty, shall be processed, by the Agency, in accordance with the Patent Cooperation Treaty, its regulations and the administrative instructions contained in the Treaty.

(3) An application for grant of a patent shall not be treated as an international application for a grant of a patent in Zambia by reason only of the application containing an indication that the applicant wishes to obtain an ARIPO patent, unless the application separately designates Zambia for the national grant of a patent.

**63.** (1) A patent granted by ARIPO, in accordance with the Harare Protocol, shall have effect in Zambia in a like manner as a patent granted in accordance with this Act, except where the Registrar communicates to ARIPO a decision, in accordance with the Harare Protocol, that such a patent shall not have legal effect in Zambia.

ARIPO  
patent

(2) Where a patent is granted by ARIPO but the grant is made without the communication required to be made by ARIPO to a member country in accordance with the Harare Protocol, or where the grant precedes the communication by ARIPO, such a patent shall not have legal effect in Zambia.

## PART VIII

### GRANT, TERM AND RENEWAL OF PATENTS

Grant and  
seal of  
patent

**64.** (1) Subject to this Act, the Registrar shall grant and seal a patent, pursuant to an application for a grant of a patent, made in accordance with this Act, upon payment of a prescribed fee, except that—

- (a) where any applicant, named in a joint application dies, the Registrar may, with the written consent of the deceased applicant's legal representative, grant the patent to the surviving applicant or applicants named in the joint application; and
- (b) where an applicant or joint applicants have agreed, in writing, to assign the invention or a share in the invention, the Registrar shall not, without proof of an executed instrument, grant the patent in the name of the assignee or their assignees.

(2) Subject to any proceedings for infringement, the effective date of a patent shall be the filing date of the application for the grant of the patent.

(3) A patent shall be sealed not later than eighteen months after the date of filing of an application for the grant of a patent, except that—

- (a) where the Registrar or the High Court has allowed an extension of the period within which a complete specification may be lodged, a corresponding extension of the period for the sealing of the patent shall be allowed;
- (b) where the sealing is delayed, by an appeal or an opposition to the grant of the patent, the patent shall be sealed at such time as the Registrar or the High Court may determine;
- (c) the Registrar may, on payment of a prescribed fee, extend the period of eighteen months for such further time as may be prescribed;
- (d) where an application for a grant of a patent is a Patent Cooperation Treaty application, a patent shall be sealed within eighteen months after the application enters the national phase.

<p><b>65.</b> (1) Subject to this Act, every patent shall be dated as of the date on which the specification was filed with the Registrar.</p>	<p>Date and duration of patent</p>
<p>(2) The date, referred to in subsection (1), shall be entered in the Register, in the prescribed manner, and inserted in the patent.</p>	
<p>(3) Subject to this Act, the duration of every patent granted shall be twenty years from the filing date of the application for the grant of a patent.</p>	
<p><b>66.</b> The Registrar shall, as soon as practicable, publish, in a prescribed manner, a notice of the grant of a patent, in the Industrial Property Journal.</p>	<p>Publication of grant</p>
<p><b>67.</b> A patentee or an exclusive licensee may, six months before the expiry of the term of a patent, apply to the Registrar for an extension of the term of a patent for a further term not exceeding two years on any of the following grounds:</p>	<p>Extension of term of patent</p>
<p>(a) where there are hostilities between Zambia or any country of the Commonwealth and any other country and the patentee has suffered loss or damage; or</p>	
<p>(b) where an act of God occurs and the patentee has not been able to work the patent.</p>	
<p><b>68.</b> The Minister shall prescribe an annual maintenance fee to be paid by a patentee for the maintenance of a patent entered in the Register in accordance with section <i>ten</i>.</p>	<p>Maintenance fee</p>
<p>(2) A patent in respect of which the maintenance fee is due and not paid by the due date lapses and the invention in respect of which the patent was granted ceases to be protected.</p>	
<p>(3) Despite subsection (2), the Registrar may extend the period for the payment of the maintenance fee for six months subject to the patentee paying a prescribed administrative penalty to the Agency.</p>	
<p><b>69.</b> (1) Where the maintenance fee, provided for in section <i>sixty-eight</i>, remains unpaid, the protection of the invention by the patent shall lapse until the maintenance fee and penalty thereon, if any, have been paid, and the Registrar shall remove the patent from the Register.</p>	<p>Lapse of protection of patent on non-payment of maintenance fee</p>
<p>(2) The Agency is not liable with respect to any patent infringement committed between the date on which the protection of the invention lapsed and the date of the publication of an application for the restoration of the patent.</p>	
<p>(3) The Registrar shall publish, in the Industrial Property Journal, an invention that has ceased to be protected by a patent, as soon as practicable.</p>	

- Restoration of patent
- 70.** (1) Where a patent for an invention has been removed from the Register, owing to non-payment of the maintenance fee referred to in section *sixty-eight*, a patentee may, within six months of the removal, apply to the Registrar for the restoration of the patent in the Register, in a prescribed manner.
- (2) If the Registrar is satisfied that the omission to pay the maintenance fee was unintentional and that no undue delay has occurred in the making of the application, referred to in subsection (1), the Registrar shall publish the application in the prescribed manner.
- (3) A person wishing to object to the restoration, referred to in subsection (2), shall do so within a prescribed period, manner and form and upon payment of a prescribed fee.
- (4) The Registrar shall, where there is no objection to the restoration of a patent, subject to the payment of such fees and any interest that remain to be paid, restore the patent in the Register and issue a certificate of payment of maintenance fee to the patentee.
- (5) The Registrar shall, where there is an objection to the restoration of a patent, after investigating the matter and hearing the applicant and the objector, restore the patent, subject to the payment of such fees and any interest that remain to be paid, and issue a certificate of payment of maintenance fee to the patentee or dismiss the application for restoration of the patent.
- (6) A person aggrieved with the decision of the Registrar, as provided in subsection (5) may, within three months of receiving the decision, appeal to the High Court.
- Rights of patentee of restored patent
- 71.** Where a patent is restored as provided in section *seventy*, the rights of the patentee shall be subject to such conditions as may be imposed, by the Registrar, for the protection or compensation of persons who may have begun to avail themselves of the invention or have taken steps by contract or otherwise to avail themselves of the invention between the date when the patent ceased to be protected and the date of the publication of the application for the restoration of the patent, made in accordance with section *seventy*.

## PART IX

## PATENT RIGHTS AND LIMITATIONS

- Exclusive rights of patentee
- 72.** (1) Subject to this Act, a patent gives the patentee the following exclusive rights, during the term of the patent:
- (a) to exploit the patented invention and authorise the exploitation of the patented invention by others;

- (b) where the patented invention is a product, to prevent any person, without the patentee's consent, from making, using, offering for sale, selling or importing the patented product;
- (c) where the patented invention is a process, to prevent any person, without the patentee's consent, from using, offering for sale, selling or importing the product obtained directly from the patented process; and
- (d) to assign, transmit or licence the patent.

(2) A person shall not do any of the acts, referred to in subsection (1), without the written consent of the patentee.

**73.** (1) The patent rights, referred to in section *seventy-two*, shall be personal property, capable of being transferred by any means by which such property may be lawfully transferred, including assignment, mortgage, pledge, testamentary instrument or operation of law.

Nature of  
patent right

(2) A transfer of a right, referred to in subsection (1), shall not be effective unless it is in writing, signed by or on behalf of the patentee and registered with the Patent Office, in accordance with this Act.

(3) A transfer of a right, as provided in subsection (1), binds each successor in title to the patentee, except a purchaser in good faith for value without actual or constructive notice of the transfer and a person who derives title from such purchaser.

(4) The Registrar shall record or cause to be recorded, in the Register, all transfers of rights or interests undertaken in accordance with this Act.

**74.** Where a patent is granted to two or more patentees, the patentees shall, subject to any agreement in force, be considered as joint owners.

Joint  
ownership  
of patent

**75.** (1) Despite any other provision of this Act, rights under a patent shall be limited to industrial or commercial activities and shall not extend to the following:

Limitations  
of patent  
rights

- (a) acts done by any person, involving a patented invention, for scientific research;
- (b) the use of the patented invention on a foreign vessel, aircraft, spacecraft or land vehicles, which temporarily or accidentally enters the territory of Zambia, provided the use is exclusively for the needs of the vessel or in the construction or operation of the aircraft, spacecraft or land vehicle;

- (c) variants or mutants of living or replicable living matter that is distinctively different from the original, for which patents were obtained, but are deserving of separate patents;
- (d) acts related to experimental use of the patented invention;
- (e) using of the patented invention for teaching purposes;
- (f) acts which include testing, making or selling of a patented invention, for purposes reasonably related to the development and submission of information required under any written law in Zambia or in a convention country;
- (g) the exploitation of the patented invention beyond the duration of the term of the patent, as provided in this Act;
- (h) compulsory licences as provided in this Act;
- (i) the prohibition of the use of the patented invention by the Government, or persons authorised by the Government, as provided in this Act;
- (j) the preparation for individual cases, in a pharmacy or by a medical doctor, of a medicine in accordance with a medical prescription; and
- (k) the manufacturing and exporting to a third country of a patented healthcare invention where the export of the invention addresses a health need identified by the third country, provided that—
  - (i) the product is not patented in the third country; or
  - (ii) the government of the third country has authorised use of the patent without the consent of the patentee and the production for export of the patented product is intended only for the market of the third country.

Exhaustion  
of rights

**76.** The rights conferred on a patentee by a patent shall not extend to acts relating to a product for which a patent subsists or to which it is applied, when the product has been put on the market in Zambia or elsewhere by the patentee or any other person with the patentee's consent.

## PART X

### INFRINGEMENT

Infringement

**77.** Subject to this Act, it is an infringement of a patentee's right in a patent for a person to do any of the acts referred to in section *seventy-two*, without the written consent of the patentee.

- 78.** It is not an infringement of a patentee's right in a patent if—
- (a) the reproduction of the patented invention is done by a person for private and not commercial exploitation purposes;
  - (b) the reproduction of the patented invention is done by a person for the sole purpose of evaluation, analysis, research or teaching; or
  - (c) a person uses the results of an evaluation, analysis or research, which involves a patented invention, to create a different invention that complies with the requirements of section *fifteen*.

Non-  
infringement  
acts

**79.** (1) A patentee or exclusive licensee shall have the right to commence court proceedings against a person who is alleged to have infringed or is performing any act likely to cause an infringement of a patentee's right in a patent.

Right to  
commence  
proceedings  
for  
infringement

(2) A person alleged to have infringed the patentee's right may, in proceedings for infringement, counterclaim for the revocation of the patent, relying on any ground on which a patent may be revoked.

(3) A patentee or licensee shall, before commencing court proceedings, referred to in subsection (1), give notice to any other holder of a licence under such patent whose name appears in the Register.

(4) A person notified, in accordance with subsection (3), may join as a co-plaintiff to the court proceedings referred to in subsection (1).

(5) Despite subsection (1), infringement proceedings shall not be heard by the court unless the proceedings are commenced within a period of five years from the date on which the facts giving rise to such proceedings became known to the patentee or an exclusive licensee, except that, the court may, in its absolute discretion, allow proceedings to be commenced after five years.

(6) Notwithstanding subsection (1), court proceedings shall not be commenced in respect of any infringement committed before the date of publication, by the Registrar, of an acceptance of an application for the grant of a patent.

**80.** On an application for infringement, by a patentee or an exclusive licensee, the court may grant any of the following reliefs:

Remedies for  
infringement

- (a) an injunction to prevent an infringement of the patentee's or exclusive licensee's right, where infringement is imminent, or to prohibit the continuation of an infringement;
- (b) an order that the infringing product or article be delivered up;

- (c) award of damages;
- (d) account of profits;
- (e) payment of royalties;
- (f) destruction or disposal of infringing products or articles, as the court considers appropriate, in accordance with laws relating to public health and the environment; or
- (g) any other remedy the court may consider appropriate.

Order for  
delivery up

**81.** (1) Where a person has in the person's possession, custody or control, for commercial exploitation, a patented invention, a patentee or licensee may apply to the High Court for an order, referred to in section *eighty* (b), that the patented product or article be delivered to the patentee or licensee or to another person that the High Court specifies.

(2) A patentee shall, by post or otherwise, notify an assignee or exclusive licensee who has a concurrent right of action in respect of an infringement of a patented invention before applying for an order for delivery up in accordance with subsection (1).

(3) The High Court may, on the application of an assignee or exclusive licensee, make an order for delivery up which the Court considers just, having regard to the terms of the assignment or licence.

(4) The High Court shall not make an order for delivery up unless it also makes, or it appears to the Court that there are grounds for making, an order as provided in section *eighty-two*.

(5) A person to whom a patented product or article is delivered up shall retain the patented product or article pending the making of an order, or a decision not to make an order, in accordance with section *eighty-two*.

Order for  
forfeiture  
destruction  
and disposal

**82.** (1) An application may be made to the High Court for—

- (a) an order that the patented product or article be delivered up, in accordance with section *eighty-one*, be forfeited to the patentee or exclusive licensee, destroyed or disposed of as the Court considers appropriate, in accordance with laws relating to public health and the environment; or

(b) a decision that no order be made under paragraph (a).

(2) In deciding what order or decision to make, in accordance with subsection (1), the High Court shall have regard to whether other remedies available to the plaintiff would be adequate to compensate the plaintiff and protect the interests of the plaintiff.

(3) The High Court shall issue directions as to the service of notice on persons having an interest in the patented product or article delivered up.

(4) A person having an interest in the patented product or article delivered up shall be entitled to—

(a) appear in proceedings for an order under this section, whether or not the person is served with notice; and

(b) appeal against any order made, whether or not that person appears in the proceedings.

(5) An order made in accordance with this section shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on appeal.

(6) Where there is more than one person interested in the patented product or article delivered up, the High Court may direct that the patented product or article be sold, or otherwise dealt with, and the proceeds divided, subject to any agreement, and shall make any other order as it considers appropriate.

(7) If the High Court decides that no order should be made in accordance with this section, the person in whose possession, custody or control the patent product or article was before being delivered up is entitled to its return.

**83.** (1) In proceedings for infringement of a patent for an invention, damages shall not be awarded, and an order shall not be made for an account of profits, against a defendant who satisfies the High Court that at the time of the infringement, the defendant was not aware, and had no reasonable grounds for supposing that the patent existed.

Restrictions  
on recovery  
of  
damages for  
innocent  
infringement

(2) A person shall not be taken to be aware or to have reasonable grounds for supposing that a product is patented by reason only of the application to a product of the word “patent” or “patented”, or any word or words expressing or implying that a patent has been obtained for a product, unless the number of the patent accompanied the word or words in question.

**84.** (1) A person who is interested in a protected patent may apply to the High Court for a declaration, by the Court, of the performance of a specific act, by the applicant, as not constituting an infringement of the patentee’s right in the protected patent.

Declaration  
of non-  
infringement

(2) The patentee, an assignee or licensee shall have the right to be joined as defendants in the proceedings referred to in subsection (1).

(3) The High Court shall not make the declaration, referred to in subsection (1), if—

(a) the act to which the application relates is already a subject of infringement proceedings; or

(b) the person making the application fails to satisfy the Court that the person had previously written to the patentee, requesting for a written acknowledgment of whether such act is infringing or non infringing, and the patentee has failed or neglected to respond to such request within a reasonable period.

(4) The High Court shall award cost for the proceedings, referred to in subsection (1), in a manner the Court considers appropriate in the circumstances.

Infringement proceedings where concurrent rights exist

**85.** (1) Where the patentee, an assignee or licensee brings proceedings for any infringement of a patent in respect of which the patentee, assignee or licensee has concurrent rights of action, the patentee, assignee or exclusive licensee need not—

(a) join the other as a plaintiff; or

(b) add the other as a defendant;

unless the High Court otherwise orders.

(2) A person who is added as a defendant, in accordance with subsection (1), shall not be liable for costs in the proceedings unless the patentee, assignee or exclusive licensee takes part in the proceedings.

(3) An exclusive licensee may, if the patentee refuses or fails to commence court proceedings within three months after giving notice to the owner to commence court proceedings, commence such proceedings in the licensee's own name, and the patentee may join in the proceedings at any time after commencement.

Presumption of validity and ownership

**86.** In any proceedings to enforce a patentee's rights in accordance with this Part, it shall be presumed, unless a defendant puts the matter in issue, that in respect of the patent that is the subject matter of the proceedings, that—

(a) the plaintiff is a patentee; and

(b) the patent is valid.

Presumption of use of patented process

**87.** Where, in infringement proceedings, an alleged infringement of a patentee's or exclusive licensee's right is in relation to a patented process for obtaining a product, the burden of establishing that an identical product was not made from a patented process shall lie with the alleged infringer, if a patentee or exclusive licensee proves, to the satisfaction of the High Court, that—

- (a) the product is new; or
- (b) a substantial likelihood exists that the identical product was made by the process and the patentee has been unable, through reasonable efforts, to determine the process actually used.

**88.** (1) In proceedings to enforce a patentee's right, in accordance with this Part, evidence may be submitted by affidavit asserting relevant facts showing that—

Affidavit  
evidence

- (a) a patentee is the owner of the patent; and
- (b) the invention is protected by a patent.

(2) Where the High Court considers, on the application of a party, that the deponent to an affidavit should be available to be cross-examined with respect to matters asserted in the affidavit, the Court shall order that such a deponent appear to be cross-examined.

(3) If a deponent does not appear to be cross-examined as required in subsection (2), the Court shall not admit the matters asserted in the affidavit into evidence.

**89.** (1) Where a person, by means of circulars, advertisements or otherwise, threatens another person with proceedings in respect of an infringement as specified in this Part, whether or not the person making the threat is a patentee, the High Court may, on the application of a person aggrieved, do any of the following:

Groundless  
threat of  
infringement  
proceedings

- (a) declare that the threat is unjustified;
- (b) grant an injunction against the continuance of the threat;  
or
- (c) award compensation for any damage sustained.

(2) The High Court shall not make any order, as specified in subsection (1), if the defendant satisfies the Court that the acts in respect of which the proceeding was threatened constituted, or would constitute, an infringement of a patentee's right as specified in this Part.

(3) The mere notification of the existence of a right, as specified in this Part, shall not constitute a threat of a proceeding for the purposes of subsection (1).

(4) An application under this section may not be brought where the threat is to bring a proceeding for an infringement that is alleged to consist of making or importing anything.

(5) Nothing in this section shall render a practitioner liable to an action in respect of an act done by the practitioner in a professional capacity on behalf of a client.

## PART XI

## SURRENDER AND REVOCATION

Surrender  
of patent

**90.** (1) A patentee may, by giving notice to the Registrar, in the prescribed manner and payment of a prescribed fee, offer to surrender a patent.

(2) Where an offer to surrender a patent is made by a patentee, the Registrar shall publish the offer, in the prescribed manner, and shall notify, in a prescribed manner, every person, other than the patentee, whose names appear in the Register as having an interest in the patent.

(3) A person who is notified of an offer as specified in subsection (2) may, within the prescribed period after the publication of the offer to surrender the patent, give written notice to the Registrar objecting to the surrender of the patent.

(4) Where a person gives notice, as specified in subsection (3), the Registrar shall notify the patentee in the prescribed manner and within a prescribed period.

(5) Where there is no objection to surrender a patent, the Registrar shall make an order revoking the patent.

(6) The Registrar shall, where there is an objection to the surrender of a patent, give an opportunity to the person offering to surrender the patent and the objector to be heard, after which the Registrar shall make an order to revoke the patent or dismiss the application to surrender the patent.

(7) Where a patent is surrendered, in accordance with this section, the Registrar shall publish or cause to be published the surrender of the patent in the Industrial Property Journal within a prescribed period from the day of surrender.

(8) An appeal, by an aggrieved person, to the decision of the Registrar made in accordance with this section, shall lie with the High Court.

Revocation  
of patent

**91.** (1) Subject to this Act, a patent may be revoked on an application to the Registrar, in a prescribed manner, by an interested person, including the state on any ground on which a patent may be opposed as specified in this Act.

(2) An application for revocation of a patent shall—

(a) state the grounds being relied on; and

(b) be filed together with the statement of facts being relied on.

(3) An application for revocation of a patent, made in accordance with this section, shall be served by the Registrar on a person appearing on the Register as a patentee or person having an interest in the patent.

(4) The Registrar shall, before revoking the patent, give the patentee or any person having an interest in the patent an opportunity to be heard.

(5) Where there is no objection to the revocation of the patent, the Registrar shall make an order revoking the patent.

(6) The Registrar shall, where there is an objection to the revocation of the patent, make an order revoking the patent or dismiss the application to revoke the patent, after hearing the matter.

(7) Where an application for the revocation of a patent applies only to some parts of the claim in the complete specification, the Registrar may only revoke those parts, except that where the grounds for revocation are established with respect to the first claim of the patent, the patent shall be invalidated.

(8) Where a patent is revoked, in accordance with this section, the Registrar shall publish or cause to be published the revocation of the patent in the Industrial Property Journal within a prescribed period from the day of revocation.

(9) A person aggrieved with a decision of the Registrar may, within three months of receiving the decision, appeal to the High Court.

**92.** (1) Where the Registrar, in consultation with the Minister, is of the opinion that a patented invention or the mode in which the patent is being exercised is prejudicial to the environment, public safety or public health, the Registrar may, after making a declaration in the Industrial Property Journal, revoke the patent.

Revocation of patent in public interest

(2) A person aggrieved by the decision of the Registrar, referred to in subsection (1), may appeal to the High Court within three months of the Registrar's decision.

**93.** Where a patent is revoked, the patent shall be null and void as from the date of the grant.

Date and effect of revocation

PART XII

PUBLICATION OR COMMUNICATION OF INVENTION RELATED TO DEFENCE AND SECURITY

**94.** (1) The Minister responsible for defence or the Minister responsible for internal security, as the case may be, may issue a notice, in a prescribed manner, to the Registrar, directing the Registrar to prohibit the publication or communication, to an unauthorised person, of an application for the grant of a patent and information contained therein, which, in the opinion of the Minister may, if published or communicated, be prejudicial to the defence of the country or the safety of the public.

Prohibiting publication or communication of information prejudicial to defence

(2) Where an application for the grant of a patent is filed with the Registrar, in accordance with this Act, and it appears to the Registrar that the application contains information, referred to in subsection (1), the Registrar may give directions prohibiting the publication or communication of such information to an unauthorised person for a period not exceeding three months from the date on which such application was to be published in accordance with section *fifty-four*.

(3) A person who contravenes any provision of this section, commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Effects of  
directions on  
application

**95.** (1) The directions issued by the Registrar, in section *ninety-four*, shall have the following effects on an application for the grant of a patent:

(a) where the application is made or considered to have been made in accordance with this Act, it may be processed but—

(i) the application shall not be published;

(ii) any information relating to the application shall not be communicated to any unauthorised person; and

(iii) a patent shall not be granted as applied for;

(b) where it is an application for an ARIPO patent, the application shall not be sent to the ARIPO office; and

(c) where it is an international application, a copy shall not be sent to the International Bureau or to any International Searching Authority appointed in accordance with the Patent Cooperation Treaty.

(2) Where the Registrar issues directions against an application for the grant of a patent, as specified in section *ninety-four*, the Registrar shall give notice, within a prescribed period, to the Minister responsible for defence or the Minister responsible for internal security, as the case may be, of such directions and the reasons for the directions and the Minister shall, on receipt of the notice, consider whether the publication or communication of such an application and the information contained in the application would be prejudicial to the defence of the country or the safety of the public.

(3) Where the Minister responsible for defence or the Minister responsible for internal security, as the case may be, after considering the notice, referred to in subsection (2), determines

that the publication or communication of the application or the grant of a patent and the information contained therein shall be prejudicial to the defence of the country or the safety of the public, the Minister shall notify the Registrar to maintain the directions in force until notification to revoke them is given by the Minister.

(4) Where the directions, referred to in section *ninety-four*, are not issued or revoked soon after notification, the Minister responsible for defence or the Minister responsible for internal security, as the case may be, shall review the directions, within a period of nine months from the date of lodging of the application for the grant of a patent or once in every subsequent period of twelve months.

(5) The Minister responsible for defence or the Minister responsible for internal security, as the case may be, may, where it appears that the publication or communication of an application for the grant of a patent and the information contained therein, is no longer prejudicial to the defence of the country or the safety of the public, give notice to the Registrar to revoke the directions and, subject to any conditions imposed by the Minister, extend the time for doing anything required to be done, in accordance with this Act, in respect of the application, whether that time had previously expired or not.

(6) The Minister responsible for defence or the Minister responsible for internal security, as the case may be, shall, in determining whether or not to revoke the directions issued by the Registrar in accordance with this section, consider the following:

- (a) the application for the grant of a patent, and any documents submitted in relation to the application before the expiry of the period for publication of the application, as specified in section *fifty-four*; or
- (b) where the application for the grant of a patent contains information relating to the production or use of atomic energy or research into matters connected with such production or use, authorise the National Council for Scientific and Industrial Research or any other competent institution to study the application and any documents lodged with the Registrar and submit a report to the Minister, as soon as it is practicable, on the utility or otherwise of the invention for which a patent is being applied for.

(7) Where it appears to the Minister responsible for defence or the Minister responsible for internal security, or the Registrar, that the person making an application for the grant of a patent has

suffered hardship by reason of the continuation in force of the directions, issued in accordance with in section *ninetyfour*; the Minister may, in consultation with the Minister responsible for finance, make such payment, by way of compensation, to the applicant, as the Minister may think reasonable, having regard to the inventive merit and utility of the invention and any other relevant consideration.

(8) A person aggrieved with the amount of this compensation paid in accordance with subsection (7) may, within three months of being paid the compensation, appeal to the High Court.

### PART XIII

#### CONTRACTUAL AND COMPULSORY LICENCES

Licence  
contract

**96.** (1) Subject to this Act, a patentee may grant a licence in respect of an invention, to another person by way of a licence contract.

(2) A licence contract shall be in writing, signed by both parties and lodged with the Registrar by either party, in a prescribed manner.

(3) The Registrar shall, on payment of the prescribed fee, enter or cause to be entered a licence contract in the Register.

(4) Subject to this Act, the Registrar shall issue or cause to be issued a certificate of registration to a licensee, where the requirements of this Part are satisfied.

(5) A certificate of registration shall be *prima-facie* evidence of any matter in respect of the registration of the licence contract.

(6) A licence contract shall not have effect against third parties until it is registered and a certificate of registration is issued.

Refusal by  
Registrar to  
register  
licence  
contract

**97.** (1) The Registrar may refuse to register a licence contract which imposes unjustified restrictions on the licensee or is prejudicial to the economic interest of the country.

(2) The Registrar shall, before refusing to register a licence contract, as provided in subsection (1), notify the parties within ninety days of receiving the contract and shall give the parties an opportunity to be heard.

(3) Where the Registrar refuses to register a licence contract but does not notify the parties to the contract or give them an opportunity to be heard, within ninety days as provided in subsection (2), the licence contract shall be deemed to have been registered at the expiry of ninety days.

(4) A licence contract lodged with the Registrar shall not be open to the public for inspection.

(5) A person aggrieved by the decision of the Registrar, made in accordance with this section, may, within three months of receiving the decision, appeal to the High Court.

**98.** (1) Where a licence contract has been granted by the patentee to the licensee as an exclusive licence, the patentee shall not grant any other licence in respect of the same patent to a third person subject to contract, and shall not do anything inconsistent with the ownership of the patent. Exclusive licence

(2) An exclusive licensee shall enjoy the rights of a patentee referred to in section *seventy-two*.

**99.** (1) A person may, after three years from the date of the grant of a patent, apply to the Minister for the grant of a compulsory licence on any of the following grounds: Compulsory licence

(a) that without reasonable cause, the patentee does not work the patented process in Zambia;

(b) that the patented product or article is not available to the public in Zambia in sufficient quantity or at an affordable price;

(c) that the refusal by the patentee to grant a contract licence, on reasonable terms, is prejudicial to the country's establishment and development of industries or commercial activities;

(d) that the applicant for a contract licence has failed to obtain the patentee's consent for the use of the patented invention, under reasonable terms and conditions;

(e) that the interest of public health or nutrition demand the commercial working of the patented invention in Zambia;

(f) that there is a need to remedy the abuse of intellectual property rights or anti-competitive practices; or

(g) that there is a national emergency which requires the use of the patented invention.

(2) The Minister shall, within three months of receiving an application for a compulsory licence, inform the patentee and give the patentee an opportunity to be heard.

(3) Where the Minister, in consultation with the Registrar, is satisfied with the submissions made by the patentee, disputing any ground referred to in subsection (1), the Minister shall reject the application made by an interested person for the grant of a compulsory licence in respect of a patented invention.

(4) Where the Minister, in consultation with the Registrar, is satisfied that any of the grounds, referred to in subsection (1), is established, the Minister shall direct the Registrar to issue a

compulsory licence to the applicant on such terms and conditions as the Minister considers appropriate in the circumstances.

(5) A compulsory licence, granted by the Minister in accordance with subsection (4), shall not be an exclusive licence and shall not entitle the licensee to grant further licences to third parties without the written consent of the patentee.

(6) A person who is granted a compulsory licence, in accordance with subsection (4), shall be required to pay the patentee such remuneration as is considered equitable, with regard to all the circumstances, including the economic value of the licence.

(7) The Minister may, in consultation with the Registrar, on the request of a patentee or licensee or on the order of the High Court, vary the terms and conditions of a compulsory licence.

(8) Subsection (3) shall not apply where a compulsory licence is granted as a result of a national emergency.

(9) Where a compulsory licence has been granted, in accordance with this section, the use of the licence shall be for the supply of the domestic market.

Grant of  
compulsory  
licence for  
inter-  
dependent  
inventions

**100.** (1) Where a patented invention cannot be worked without infringing the rights derived from an earlier patent, the owner of a later patent may apply to the Registrar, in the prescribed manner, for the grant of a compulsory licence with respect to the earlier patent, to the extent necessary for the working of a later patent, if the invention constitutes an important technical advancement of economic value.

(2) Where the Registrar is satisfied with an application, referred to in subsection (1), the Registrar shall issue a compulsory licence to the applicant on such terms and conditions as the Registrar shall consider appropriate in the circumstances.

(3) The owner of an earlier patent shall be entitled to a cross-licence, on reasonable terms and conditions, to use the invention claimed in the second patent.

(4) The use, authorised by a compulsory licence, referred to in subsection (1), shall only be transferable to another person on the assignment of a second patent.

(5) In this section—

“earlier patent” means a patent granted for an earlier invention or a patent for an invention claiming an earlier priority date; and

“second patent” means a validly granted patent which cannot be worked without infringing another patent.

**101.** The Minister may, by statutory instrument, direct the Registrar to grant compulsory licences with respect to patented products declared by the Government, to be of vital importance to the defence, public health, the environment or the economy of the country.

Compulsory  
licence  
granted  
under  
regulation

**102.** The Minister may on the application of an interested person, or on the advice of the Registrar, revoke a compulsory licence on any of the following grounds:

Revocation  
of  
compulsory  
licence

(a) that the licensee has failed to comply with the terms of the licence;

(b) that the conditions which justified the grant of the licence have ceased to exist and are unlikely to recur;

(c) that the interests of the licensee have been adequately protected;

(d) that the licensee has failed, within *twenty-four* months from the grant of the licence, to take the necessary steps to work the invention to satisfy the reason for the grant of a compulsory licence; or

(e) that the patentee has granted the licensee a licence contract on more favourable terms.

**103.** The Registrar shall enter in the Register, a grant of a compulsory licence, the terms and conditions of the licence, variation of the terms and conditions of the licence and revocation of the licence.

Registration  
of  
compulsory  
licence

**104.** (1) A patentee may, at any time after the sealing of a patent, apply to the Registrar for a patent to be endorsed with the words “licence of right”.

Licence of  
right

(2) The Registrar shall, where the Registrar is satisfied that the patentee is not prohibited by contract from granting a licence, endorse or cause the patent to be endorsed as referred to in subsection (1).

(3) A patentee may, at any time after a patent has been endorsed, apply to the Registrar for the cancellation of the endorsement referred to in subsection (1).

## PART XIV

### EXPLOITATION OF PATENTED INVENTION BY GOVERNMENT

**105.** Where the Government requires, for purposes of public health, the environment or national emergency, that a patented invention be exploited, for non-commercial purposes, by the

Use of  
invention by  
Government

Government or an authorised person, the Minister may, with or without the consent of the patentee, authorise in a prescribed manner, the exploitation of the patented invention.

Notification of patentee by Government

**106.** (1) Where the Government or an authorised person knows, without conducting a patent search that it is using or will be using a patented invention for purposes referred to in section *one hundred and five*, the Minister shall, as soon as it is practicable, notify the patentee of the use or the intended use of the patented invention.

(2) A patentee who is aggrieved by the decision of the Minister made in accordance with this section may, within three months of the decision, appeal to the High Court.

Extent, duration and limitation of use of patented invention

**107.** (1) The extent and duration of the use of a patented invention, by the Government or an authorised person, shall be limited to the purposes referred to in section *one hundred and five*.

(2) The use of the patented invention, in accordance with section *one hundred and five* shall not be assignable or exclusive.

Compensation of patentee for use of patented invention

**108.** (1) Where a patented invention is used by the Government or an authorised person, the patentee shall be paid, within a prescribed period, by the Government or the authorised person, such remuneration as may be considered equitable compensation, with regard to all the circumstances, including the economic value of the patented invention.

(2) A patentee aggrieved with the amount of compensation paid in accordance with subsection (1) may, within three months of being paid the compensation, appeal to the High Court.

## PART XV

### UTILITY MODELS

Applicability of provisions relating to patents

**109.** (1) The provisions of this Act relating to patents shall, with the necessary modifications, apply to utility models.

(2) Section *fifteen* (1) (b) does not apply to utility models.

(3) An application for the registration of a utility model shall contain—

- (a) a request for the registration of the utility model;
- (b) a claim specifying what is to be protected by the registration of the utility model;
- (c) the description of the subject matter of the utility model;
- (d) the drawings to which the claim or description relates; and
- (e) any other requirements as may be prescribed.

- 110.** (1) A utility model certificate shall be granted for an invention which is new, capable of industrial application and complies with the relevant provisions of this Act. Utility model certificate
- (2) In this section “invention” means form, configuration or disposition of elements of an appliance, electrical and electronic circuitry, instrument, handicraft, mechanical working tools or articles of everyday use, in so far as they are capable of contributing some benefit or new effect with regard to saving of time, energy and labour or allowing a better or different function, use, processing or manufacture of the subject matter, and includes micro-organisms or self replicating material and products of genetic resources, which give new effects.
- 111.** (1) Subject to this Act, every utility model certificate, granted in accordance with this Act, shall be dated as of the date on which the application for the protection of the utility model was filed with the Registrar. Date and term of utility model
- (2) The date of a utility model certificate shall be inserted in or on the utility model.
- (3) Subject to this Act, the term of a utility model certificate shall be ten years from the date of filing of the application for the protection of the utility model with the Registrar.
- (4) Despite anything contained in this Part, a suit or other proceedings shall not be commenced in respect of an infringement committed before the date of publication of an application for a utility model certificate.
- 112.** (1) An applicant for the grant of a patent or a utility model certificate may, convert, on payment of the prescribed fee, the patent application into an application for a utility model certificate or the utility application into an application for the grant of a patent. Conversion of application
- (2) A conversion for an application, referred to in subsection (1), shall not be made twice.
- (3) The Registrar shall maintain a record of particulars of utility model certificates granted, in accordance with this Act, and with all other matters related to utility models under a designated part of the Register.
- 113.** (1) A utility model granted by ARIPO, in accordance with the Harare Protocol, shall have effect in Zambia in a like manner as a utility model granted in accordance with this Act, except where the Registrar communicates to ARIPO a decision, in accordance with the Harare Protocol, that such a utility model shall not have legal effect in Zambia. ARIPO utility model

(2) Where a utility model is granted by ARIPO but the grant is made without the communication required to be made by ARIPO to a member State in accordance with the Harare Protocol, or where the grant precedes the communication by ARIPO, such a utility model shall not have legal effect in Zambia.

## PART XVI

## PATENT AGENTS

Register of  
patent  
agents

**114.** The Registrar shall maintain a register of patent agents in which shall be entered particulars of patent agents as may be prescribed.

Registration  
as patent  
agent

**115.** (1) A person qualifies to be registered as a patent agent if the person—

- (a) is of sound mind;
- (b) is at least twenty-one years of age;
- (c) is a Zambian citizen or holder of a permanent resident permit;
- (d) has passed the qualifying examination prescribed for patent agents; and
- (e) has paid the prescribed fee.

(2) A person who is qualified to be registered as a patent agent may apply, in the prescribed form and manner, to the Registrar to be registered as such.

(3) The Registrar shall register a person who qualifies to be registered as a patent agent and issue such person with a patent agent's certificate, as prescribed.

(4) Despite subsection (1), a practitioner who practices in Zambia may act as a patent agent without being registered as specified in this Part.

(5) A person who is not a practitioner shall not, either in partnership with another person or not, practice, describe or hold out, as a patent agent, unless that person is, and the partners are registered, with the Agency, as patent agents.

Functions of  
patent agent

**116.** (1) Subject to this Act, a patent agent may act as an agent on behalf of a person in connection with any matter or proceedings before the Registrar and may prepare and sign any document connected with or incidental to the application of a grant of a patent and make all communications between an applicant and the Agency.

(2) A body corporate shall not practice, describe itself or hold itself out or permit itself to be held out as a patent agent.

- 117.** The Registrar may remove, from the register of patent agents, the name of an agent, on being satisfied that the agent—
- (a) has been declared to be of unsound mind by a court of competent jurisdiction;
  - (b) has died;
  - (c) is an undischarged bankrupt;
  - (d) has been convicted of fraud, forgery or uttering a forged document;
  - (e) has been entered in the register of patent agents in error or by misrepresentation;
  - (f) has been removed from the roll of practitioners; or
  - (g) has applied to the Registrar to be removed from the register of patent agents.
- 118.** The Registrar may, on application with sufficient cause being shown and on payment of the prescribed fee, restore, onto the register of patent agents, the name of a person who was removed from the register.
- 119.** Subject to this Act, the Registrar may refuse to deal with a person who is not registered as a patent agent but is engaged in applying for patents outside Zambia in the name or for the benefit of a person by whom the person is employed.

Removal of patent agent from register

Restoration of patent agent

Refusal by Registrar to deal with certain agents

## PART XVII

## OFFENCES

- 120.** (1) A person commits an offence if the person makes a die, block, machine or instrument—
- (a) knowing that it is likely to be used for, or in the course of committing an offence against a patent; or
  - (b) whether or not it is likely to be used for, or in the course of, committing an offence against patent.
- (2) A person commits an offence if the person possesses or disposes of—
- (a) a die, block, machine or instrument; or
  - (b) a representation of a patent knowing that, or reckless of whether or not, the die, block, machine, instrument, computer, device or representation is likely to be used for, or in the course of, committing an offence.
- (3) For the purposes of subsection (1), strict liability shall apply to the physical element of the offence.

Manufacture and possession of die for use in commission of offence

- Holding out as patent agent
- 121.** A person who describes or holds out, or permits another to describe or hold out as a patent agent when not duly registered, in accordance with this Act, commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or imprisonment for a term not exceeding two years or to both.
- Offences by body corporate or unincorporated body
- 122.** Where an offence in accordance with this Act is committed by a body corporate or unincorporated body, every director or manager of the body corporate or unincorporated body is liable, upon conviction, as if the director or manager had personally committed the offence, unless the director or manager proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of the director or manager or that the director or manager took reasonable steps to prevent the commission of the offence.
- General offences
- 123.** A person who—
- (a) provides false information in an application for the grant of a patent or utility model certificate;
  - (b) makes or causes to be made a false entry in the Register, or any document purporting it to be a copy of an entry in the Register or produces or tenders or causes to be produced or tendered in evidence any such document, knowing the entry or document to be false;
  - (c) alters or defaces or partly removes, erases or obliterates any document issued by the Registrar;
  - (d) makes or submits a false statement or representation, whether orally or in writing, to the Registrar or Agency knowing the same to be false;
  - (e) knowingly uses, in any way, words, whether orally or in writing, or acts in a manner which lead other persons to believe that the person is an employee or agent of the Agency;
  - (f) having innocently made a false statement or representation, whether orally or in writing, for the purpose of procuring or influencing the doing or omission of anything in relation to this Act and who on becoming aware that such statement or representation was false, fails to advise the Registrar of such falsity;
  - (g) after having been sworn, willfully gives false evidence before the Registrar knowing such evidence to be false or not knowing or believing it to be true;

(h) aids, abets, counsels or procures the commission of an offence or is in any way directly or indirectly a party to the commission of an offence; or

(i) otherwise breaches any other provision of this Act;

commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

**124.** A person who contravenes any provision of this Act, where no specific penalty has been provided is liable upon conviction, to a fine not exceeding four hundred thousand penalty units or to imprisonment for a term not exceeding four years, or to both.

General  
penalty

## PART XVII

### GENERAL PROVISIONS

**125.** Subject to this Act, where any discretionary or other power is given to the Registrar, the Registrar shall not exercise that power adversely or arbitrarily and a person challenging a decision of the Registrar has the right to apply to the High Court.

Exercise of  
discretionary  
power

**126.** (1) The Registrar shall sit with such number of assessors, in all proceedings brought before the Registrar.

Registrar to  
sit  
with  
assessors  
in  
determining  
matter

(2) The Registrar shall appoint the assessors, referred to in subsection (1), as and when required and such assessors shall be remunerated by the agency as the Minister may prescribe.

**127.** (1) A certificate purporting to be signed by the Registrar and certifying that an entry, which the Registrar is authorised in accordance with this Act to make, has or has not been made or that any other thing which the Registrar is so authorised to do, has or has not been done, shall be *prima-facie* evidence of the matters so certified.

Evidence of  
certain  
entries and  
documents

(2) A copy of any entry in the Register or any other register maintained in accordance with this Act or any document or an extract from the Register or any such register or document certified by the Registrar shall be admitted in evidence without further proof and without production of the original.

**128.** Subject to this Act, the Registrar shall, on the request of any person and on payment of the prescribed fee, furnish copies of any document which is open to public inspection and which is lodged in the Register or any other register, which is maintained in accordance with this Act, or furnishes a certificate in respect of the document.

Requests for  
information

Waiver of prescribed fee	<b>129.</b> Despite section <i>one hundred and thirty-eight</i> , the Registrar may, in whole or in part, waive the payment of a prescribed fee, in accordance with prescribed circumstances.
Extension of time	<b>130.</b> If, due to circumstances beyond the control of a person, an act required by this Act to be done within a prescribed time is not or cannot be done within that time, the Registrar may, on application by the person, extend the time for doing the act.
Registrar to act as soon as practicable	<b>131.</b> Where the Registrar is required in this Act to do any act or thing and no time or period is provided within which the act or thing is to be done, the Registrar is to do the act or thing as soon as practicable.
Registrar's statement to High Court	<b>132.</b> Unless otherwise directed by the High Court, the Registrar may submit to the Court a statement, in writing, signed by the Registrar, giving particulars of the proceedings that were before the Registrar in relation to the matter in issue, the practice of the Agency in similar cases and such other matters within the particular knowledge of the Registrar and the statement shall form part of the evidence in the proceedings before the Court.
Authorisation to publish advertisement of notice	<b>133.</b> (1) An advertisement or notice specified in this Act, other than a notice issued by the Minister, shall not be published unless it is in the prescribed form and the Registrar has approved the contents of the advertisement or notice.  (2) An advertisement or notice that is published in contravention of subsection (1) shall have no legal effect for purposes of this Act.
Replacement of certificate	<b>134.</b> Where a certificate, issued under the hand of the Registrar, in accordance with this Act, is lost or destroyed, the Registrar may, upon being satisfied, issue and seal a replacement certificate, on payment of a prescribed fee.
Lodging and authentication of documents	<b>135.</b> (1) An application, notice or document authorised or required, in accordance with this Act, to be lodged, made or given at the Agency, may be lodged, made or given to the Registrar or to any other officer and may be delivered by hand, sent by registered post or electronically.  (2) An authentication shall not be required in respect of any document lodged in the Agency or the Registrar.
Expenses relating to administration	<b>136.</b> Monies necessary for the administration and implementation of this Act, shall be paid out of fees charged in respect of services rendered and monies accrued to the Agency and monies appropriated by Parliament.

**137.** (1) The Registrar may impose an administrative penalty on a person for any failure to comply with this Act. Administrative penalties

(2) An administrative penalty, referred to in subsection (1), shall not exceed the amount prescribed by the Minister for each day during which such failure continues.

(3) An administrative penalty, imposed in accordance with subsection (1), shall be paid to the Agency within the period specified by the Registrar.

(4) If any person fails to pay an administrative penalty, within the period specified in subsection (3), the Registrar may, by way of civil action in a competent court, recover the amount of the administrative penalty from such person as an amount due and owing to the Agency.

**138.** (1) Subject to this Act, where— Prescribed fee

(a) a prescribed fee is payable in respect of the performance of any act by the Registrar or any other authorised person, the act shall not be performed until the fee is paid in full; or

(b) a prescribed fee is payable in respect of the filing of a document, the document shall be considered not to have been filed until the fee is paid in full.

(2) Prescribed fees shall be paid to the Agency in such manner as the Agency may determine.

**139.** (1) The Minister may, by statutory instrument, make regulations prescribing anything which is required to be prescribed and generally for the better carrying out of, or giving effect to, the purposes of this Act. Regulations

(2) Without derogating from the generality of subsection (1), regulations made by the Minister may provide for—

(a) administrative requirements or any necessary details for the implementation of this Act and any relevant international treaty or convention to which Zambia is a State Party;

(b) procedures for applications for any patent or utility certificate in accordance with this Act;

(c) forms to be used for purposes of this Act;

(d) fees to be charged for purposes of this Act; and

(e) preventive mechanisms aimed at protecting patented inventions and utility models.

Repeal of Cap. 400	<b>140.</b> The Patents Act, 1958, is repealed.
Transitional provisions	<b>141.</b> The transitional provisions set out in the Schedule apply for purposes of this Act.

## SCHEDULE

*(Section one hundred and forty-one)*

## TRANSITIONAL PROVISIONS

Previous application	<b>1.</b> An application for the grant of a patent for an invention made prior to the commencement of this Act shall be processed as if this Act had not been passed, but the grant of the patent shall be made in accordance with this Act.
Previous patent licence or agreement	<b>2.</b> A patent, licence or contract made prior to the commencement of this Act shall, subject to equitable treatment of the rights and interests acquired by third parties, be continued under this Act and shall, within six months of the commencement of this Act, comply with this Act.
Patent agent	<b>3.</b> (1) A person who was a patent agent prior to the commencement of this Act shall continue to be a patent agent and shall within six months of the commencement of this Act, comply with the requirements of this Act.  (2) A patent agent who fails to comply with this Act as specified in subparagraph (1), shall after the expiry of the period of six months cease to be a patent agent.
Pending proceedings	<b>4.</b> (1) The enactment of this Act shall not affect any proceedings instituted in terms of the repealed Act, which were pending in court, immediately before the date of commencement of this Act, and such proceedings shall be disposed off in court as if this Act had not been passed.  (2) Any criminal proceedings instituted as specified in subsection (1), shall be regarded as having been pending if the person concerned had pleaded to the charge in question.  (3) Any administrative investigation instituted in accordance with the repealed Act, which was pending, shall be disposed off as if this Act had not been passed.  (4) All disciplinary proceedings which, immediately before the commencement of this Act, were underway or pending shall be concluded as if this Act had not been passed.  (5) All appeal processes which, immediately before the commencement of this Act, were underway or pending shall proceed as if this Act had not been passed.

