

ACT

Supplement to the Sierra Leone Gazette Vol. CXLIII, No. 53
dated 11th October, 2012

THE PATENTS AND INDUSTRIAL DESIGN ACT, 2012

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SCHEDULE

SIGNED this 5th day of October, 2012.

DR. ERNEST BAI KOROMA,
President.



No. 10

2012

Sierra Leone

The Patents and Industrial Designs Act, 2012.

Short title.

Being an Act to provide for the promotion of inventive and innovative activity and facilitate the acquisition of technology through the grant and regulation of patents and industrial designs and for other related matters.

[] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART I—PRELIMINARY

Interpretation. **1.** In this Act, unless the context otherwise requires-

"agent " means a legal practitioner resident and practicing in Sierra Leone;

"ARIPO" means the African Regional Intellectual Property Organisation;

"ARIPO Protocol" means the Protocol on Patents and Industrial Designs adopted at Harare in December 1984;

"Court" means the High Court;

"industrial design" means any composition of lines or colours or any three dimensional material, whether or not associated with lines or colours, provided that such a composition, form or material gives a special appearance to a product of industry or handicraft, can serve as a pattern for a product of industry or handicraft and appeals to and is judged by the eye;

"invention" means an idea of an inventor which permits in practice a solution to a specific problem in the field of technology;

"Minister" means the Minister responsible for Trade;

"patent" means the title granted to protect an invention;

"priority date" means the date of the earlier application that serves as the basis for the right of priority provided in the Paris Convention;

"Paris Convention" means the Paris Convention for the Protection of Industrial Property of March, 20 1883;

"Registrar" means the Registrar of Intellectual Property;

"Registry" means the office of the Registrar.

PART II - PATENTABILITY

2. An invention is patentable if it is new, involves an inventive step and is industrially applicable. Patentable inventions.

3. (1) An invention is new if it is not anticipated by prior art. Novelty.

(2) For the purpose of this Act, prior art consists of everything disclosed to the public anywhere in the world, by publication in tangible form or by oral disclosure, by use or in any other way, prior to the filing or, where appropriate, the priority date, of the application claiming the invention.

(3) In the evaluation of novelty, an application for the grant of a patent in Sierra Leone shall be considered to have been comprised in prior art as from the filing date of the application, or if priority is claimed, as from the date of its validity claimed priority, to the extent to which its content is available or is later made available to the public in accordance with this Act.

(4) For the purposes of subsection (2), a disclosure of the invention to the public shall not be taken into consideration if it occurred within twelve months preceding the filing date or where applicable, the priority date of the application; and if it was by reason or in consequence of-

- (a) acts committed by the applicant or his predecessor-in- title; or
- (b) an abuse committed by a third party or his predecessor- in-title.

Inventive step. **4.** An invention shall be considered as involving an inventive step if, having regard to the prior art relevant to the application claiming the invention, it would not have been obvious to a person having ordinary skill in the art.

Industrial application of invention. **5.** (1) An invention shall be considered industrially applicable if it can be made or used in any kind of industry.

(2) For the purposes of this section "industry" shall be understood in its broadest sense and shall cover, in particular handicraft, agriculture, fishery and services.

Non-patentable inventions. **6.** The following shall not be regarded as inventions for the purposes of patent protection:-

- (a) discoveries, scientific theories and mathematical methods;
- (b) schemes, rules or methods for doing business, performing purely mental acts or playing games;
- (c) methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practiced on the human or animal body; this provision shall not apply to products for use in any of these methods;
- (d) inventions the commercial exploitation of which would be contrary to public order, morality, public health and safety, principles of humanity and environmental conservation;

- (e) plants and animals other than micro-organisms;
- (f) biological processes for the protection of plants or animals other than non-biological and micro-biological processes; and
- (g) plant varieties.

PART III - RIGHT TO PATENT AND NAMING OF INVENTOR

7. (1) The right to a patent shall belong to the inventor. Right to patent.

(2) If two or more persons have jointly made an invention, the right to the patent shall belong to them jointly.

(3) If and to the extent to which two or more persons have made the same invention independently of each other, the person whose application has the earliest filing date or, if priority is claimed, the earliest validly claimed priority date shall have the right to the patent, unless the application is withdrawn, abandoned or rejected.

(4) The right to a patent may be assigned or transferred by succession.

(5) Sections, 60, 61, 63 and 75 shall apply *mutatis mutandis* to contracts assigning the right to a patent.

8. Where the applicant has obtained the essential elements of the invention which is the subject of his application from the invention of another person he shall, unless authorised by the person who has the right to the patent for the latter invention to apply for the patent or own the patent, be obliged to assign to such person the application or where the patent has already been granted, the patent right. Unauthorized application based on invention of another person.

Invention made in execution of employment contracts.

9. (1) Where an invention is made in execution of an employment contract the right to the patent shall belong, in the absence of contractual provisions to the contrary, to the employer.

(2) Inventions made without any relation to an employment or service contract and without the use of the employer's resources, installations or equipment shall belong solely to the employee or person commissioned.

(3) In the absence of an express term to the contrary, inventions made by the employee or person commissioned which do not come within subsection (1) and which results from both the personal contribution of the inventor and the resources, installations or equipment of the employer, shall be owned jointly in equal shares and the employer shall have the exclusive right to a licence of exploitation and the employee or person commissioned shall have the right to a fixed remuneration.

(4) The exploitation of the subject of the patent shall be started by the employer within one year from the date of the patent grant, failing which the invention shall become the exclusive property of the employee or person commissioned.

(5) The employer may also apply for a patent under subsection (3) to be granted in another country provided that fixed remuneration is guaranteed to the employee or person commissioned.

(6) In the absence of an agreement to start the exploitation of the patent during such exploitation, either of the joint owners on an equal footing may exercise his right of preference within the period provided under this Act.

(7) This section shall also apply where relevant directly or indirectly to governmental and other public organisations.

(8) The advantages given to the employee by subsection (4) shall not be reduced by contract.

10. (1) The inventor shall be named as such in the patent, unless in a special written declaration signed by him and addressed to the Registrar he indicates that he wishes not to be named. ^{Naming of inventor.}

(2) Any promise or undertaking by the inventor made to any person to the effect that he will make such a declaration shall be without legal effect.

PART IV - APPLICATION FOR GRANT AND REFUSAL OF GRANT OF PATENT

11. (1) An application for a patent shall be filed with the Registrar and shall contain - ^{Application.}

- (a) a request;
- (b) a description;
- (c) one or more claims;
- (d) one or more drawings or deposits of biological material where required; and
- (e) an abstract.

(2) The application shall be subject to the payment of the prescribed application fee.

(3) Where the applicant's ordinary residence or principal place of business is outside Sierra Leone, he shall be represented by an agent.

(4) The request shall contain a petition to the effect that the patent be granted, and shall state the name of and other prescribed date concerning the applicant, the inventor and the agent, if any, and the title of the invention.

(5) Where the applicant is not the inventor, the request shall be accompanied by a statement justifying the applicant's right to the patent.

(6) The appointment of an agent shall be indicated by the designation of the agent in the request or the furnishing of a power of attorney signed by the applicant and where subsection (2) applies, the agent shall be designated in the request.

(7) The description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person having ordinary skill in the art, and shall, in particular, indicate at least one mode known to the applicant for carrying out the invention.

(8) The claim or claims shall define the matter for which protection is sought and shall be clear and concise and fully supported by the description.

(9) The description and drawings may be used to interpret the claims.

(10) The abstract shall merely serve the purpose of technical information; but it shall not be taken into account for the purpose of interpreting the scope of the protection.

Withdrawal of application.

12. The applicant may, up to the time when the application is in order for grant, withdraw the application at any time during its pendency.

Unity of invention.

13. (1) The application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

(2) The fact that a patent has been granted on an application that did not comply with the requirement of unity of invention under subsection (1) shall not be a ground for the invalidation of the patent.

14. The applicant may, up to the time when the application is in order for grant, amend the application, provided that the amendment does not go beyond the disclosure in the initial application. Amendment of application.

15. The applicant may, up to the time when the application is in order for grant, divide the application into two or more applications (hereafter referred to as "divisional applications"), but each divisional application shall not go beyond the disclosure in the initial application. Division of application.

16. (1) An application may contain a declaration claiming the priority, as provided for in the Paris Convention, of one or more earlier national, regional or international applications filed by the applicant or his predecessor-in-title in or for any State party to the Paris Convention or the World Trade organisation. Right of priority.

(2) Where the application contains a declaration under subsection (1), the Registrar may request that the applicant furnish, within the prescribed time limit, a copy of the earlier application certified as correct by the Agency with which it was filed, or where the earlier application filed is an international application under the Patent Co-operation Treaty, by the receiving Agency with which the application is filed.

(3) The effect of the declaration shall be as provided in the Paris Convention

(4) If the Registrar finds that the requirements under this section have not been fulfilled, the declaration shall be considered to be void.

(5) The relevant provision of the Paris Convention on the purpose of this section are set out in the Schedule.

17. (1) The applicant shall, at the request of the Registrar, furnish the Registrar with the date and number of any foreign application. Information relating to corresponding foreign applications and patents.

(2) The applicant shall, at the request of the Registrar, furnish the Registrar with the following documents relating to one or more of the foreign applications referred to in subsection (1) -

- (a) a copy of any communication received by the applicant concerning the result of any search or examination carried out in respect of the foreign application;
- (b) a copy of the patent granted on the basis of the foreign application; and
- (c) a copy of any final decision rejecting the foreign application or refusing the grant in the foreign application.

(3) The applicant shall, at the request of the Registrar, furnish the Registrar with a copy of any final decision invalidating the patent granted on the basis of the foreign application referred to in subsection (2).

(4) The applicant shall have the right to submit comments on the documents furnished under this section.

(5) For the purposes of this section "foreign application" means any application filed by the applicant abroad which relates to the same or essentially the same invention as that claimed in the application filed with the Registrar.

Filing date.

18. (1) The Registrar shall accord as the filing date, the date of receipt of the application, if at the time of receipt, the application contains -

- (a) an express or implicit indication that the granting of a patent is sought;

(b) indications allowing the identity of the applicant to be established;

(c) a part which, on the face of it, appears to be a description of an invention.

(2) Where the Registrar finds that the application did not, at the time of receipt, fulfill the requirements referred to in subsection (1), the Registrar shall invite the applicant to file the required correction and shall accord as the filing date the date of receipt of the required correction, but if no correction is made, the application shall be regarded as void.

(3) Where the application refers to drawings which are not included in the application, the Registrar shall invite the applicant to furnish the missing drawings; and if the applicant complies with the said invitation, the Registrar shall accord as the filing date, the date of receipt of the missing drawings, otherwise the Registrar shall accord as the filing date the date of receipt of the application and shall treat any references to the drawings as non-existent.

(4) Where the request is accompanied by a statement on the rights to the patent, the Registrar shall send a copy of the statement to the inventor and the inventor shall have the right to inspect the application and to receive at his own expense, a copy thereof.

(5) After according a filing date, the Registrar shall examine whether there are any of the following defects with respect to the application:-

- (a) the application does not comply with the requirements of subsections (1) and (3) of section 10;
- (b) the applicant has not complied with a request of the Registrar under section 16; or

(c) the requisite fees have not been paid.

(6) The details of the requirements and the procedure under this section shall be prescribed.

International-type search.

19. (1) The Registrar may direct that any application found in order as to form shall be the subject of an international-type search.

(2) When a direction under subsection (1) is made, the Registrar shall invite the applicant to pay the prescribed fees: and if the applicant does not comply with the invitation, the application shall be rejected by the Registrar.

(3) Upon receipt of the report on the international-type search, the Registrar may request the applicant to furnish the Registrar with a copy of any document cited in the report and if without lawful reason, any copy is not furnished within the prescribed time limit, the application shall be rejected.

(4) If it is apparent from the international-type search or from the refusal to furnish the report, that the subject of the application or of any claim or claims is not an invention, the Registrar shall reject the defective application or consider the defective claim or claims to be withdrawn, as the case may be, unless the applicant satisfies the Registrar that the subject of the application or claims constitutes an invention.

(5) Where it is apparent from the report on the international-type search or from the refusal to furnish the report, that -

- (a) the description, claims or, where applicable, the drawings do not comply in whole or in part, with the prescribed requirements to such an extent that no meaningful search could be carried out; or

(b) the application does not comply, in whole or in part, with the requirement of unity of invention prescribed in section 12 and the Regulations pertaining to it,

the Registrar shall reject the application unless the applicant either satisfies the Registrar that the requirements have been fulfilled or amends or divides the application so as to comply with the requirements.

(6) The details of the requirements and the procedures under this section shall be prescribed by regulations.

20. (1) Where the Registrar is satisfied that the conditions referred to in section 18 are fulfilled, the Registrar shall grant the patent, otherwise, he shall refuse the application and notify the applicant of that decision. ^{Grant of patent.}

(2) Where the Registrar grants a patent, he shall -

- (a) publish a reference to the grant of the patent;
- (c) issue to the applicant a certificate of the grant of the patent and a copy of the patent;
- (d) record the patent in the Register; and
- (e) make available copies of the patent to the public, on payment of the prescribed fee.

21. The Registrar shall, upon request of the owner of the patent, make changes in the text or drawings of the patent in order to limit the extent of the protection conferred by the patent: but the change should not result in the disclosure contained in the patent going beyond the disclosure contained in the initial application on the basis of which the patent was granted. ^{Changes in patent}

Right conferred by patent.

22. (1) The owner of the patent has the right to prevent any person from exploiting the protected invention by any of the following acts:-

- (a) where the patent has been granted in respect of a product-
 - (i) making, importing, offering for sale, selling and using the product;
 - (ii) stocking such product for the purposes of offering for sale, selling or using the product;
- (b) where the patent has been granted in respect of a process-
 - (i) using the process; or
 - (ii) doing any of the acts referred to in paragraph (a) in respect of a product obtained directly by means of the process.

(2) The owner of the patent shall, in addition to any other rights, remedies or actions available to him, have the right, subject to section 23 to institute legal proceedings against any person who infringes the patent by performing, without his agreement, any of the acts referred to in subsection (1) or who performs acts which make it likely that infringement will occur.

Limitation of rights.

23. (1) The rights under the patent shall not extend-

- (a) to acts in respect of articles which have been put on the market in any country by the owner of the patent or with his consent; or

- (b) to the use of articles on aircraft, land vehicles or vessels of other countries which temporarily or accidentally enter the airspace, territory or waters of Sierra Leone;
- (c) to acts done only for experimental purposes relating to a patented invention; or
- (d) to acts performed by any person who in good faith, before the filing or, where priority is claimed, the priority date of the application on which the patent is granted in Sierra Leone, and was using the invention or was making effective and serious preparations for such use.

(2) The right of prior user referred to in paragraph (d) of subsection (1) may be transferred or devolved only together with the enterprise or business, or with that part of the enterprise or business, in which the use or preparations for use have been made.

24. Subject to section 25, a patent shall expire twenty years after the filing date of the application for the patent. Duration of patent.

25. (1) In order to maintain the patent or patent application, an annual fee shall be paid in advance to the Registrar for each year, starting one year after the filing date of the application for grant of the patent. Annual fees.

(2) A period of grace of six months shall be allowed for the late payment of the annual fee on payment of the prescribed surcharge.

(3) If an annual fee is not paid in accordance with this section, the patent application shall be deemed to have been withdrawn or the patent shall lapse automatically and the related information shall fall into the public domain and the lapse of the patent shall be published by the Registrar.

(4) Within six months from the expiration of the period of grace referred to in subsection (2), any interested person may, upon payment of the prescribed fee, request the Registrar to restore an application that is deemed to have been withdrawn, or a patent that has lapsed, by virtue of subsection (3).

(5) Where the patent has lapsed due to the non-payment of an annual fee within the prescribed period, the patentee may, in the prescribed manner and on the payment of the prescribed fee, apply to the Registrar for the restoration of the patent.

(6) If the Registrar is satisfied that the omission to pay was unintentional and that no undue delay has occurred in the making of the application the Registrar shall advertise the application in the prescribed manner and any person may, within the prescribed period, give notice in the prescribed manner objecting to the restoration of the patent.

(7) If there is no objection to the restoration, the Registrar may issue an order restoring the patent or dismiss the application.

(8) Where a notice of objection is given, the Tribunal shall, after hearing the applicant and the objector, decide the matter and issue an order restoring the patent or dismissing the application.

(9) Any order restoring the patent shall be subject to the payment of any fee remaining unpaid on the date of the order.

26. (1) Where-

- (a) the public interest in particular, national security, nutrition, health or the development of other vital sectors of the national economy so requires; or

Exploitation by Government or person authorised by Government.

- (b) the Registrar has determined that the manner of exploitation by the owner of the patent or his licensee, is anti-competitive, and the Minister is satisfied that the exploitation of the invention in accordance with this subsection would remedy such practice,

the Minister may decide that, without the agreement of the owner of the patent, a Government agency or a third person designated by the Minister may exploit a patented invention.

(2) The exploitation of the patented invention shall be limited to the purpose for which it was authorised and shall be subject to the payment to the owner of an adequate remuneration taking into account the economic value of the Minister's authorisation, as determined in the decision, and, where a decision has been taken under paragraph (b) of subsection (1), the need to correct anti-competitive practices.

(3) The Minister shall take a decision after hearing the owner of the patent and any interested person if they wish to be heard.

(4) A request for the Minister's authorisation shall be accompanied by evidence that the owner of the patent has received from the person seeking the authorisation, a request for a contractual licence, but that that person has been unable to obtain such a licence on reasonable commercial terms and conditions and within a reasonable time.

(5) Subsection (4) shall not apply in cases of -

- (a) national emergency or other circumstances of extreme Urgency; but in such cases the owner of the patent shall be notified of the Minister's decision as soon as is reasonably practicable;

- (b) public non-commercial use; and
- (c) anti-competitive practices determined as such by the Registrar.

(6) The exploitation of a patented invention in the field of semi-conductor technology shall only be authorised either for public non-commercial use or where the Registrar determines that the manner of exploitation of the patented invention by the owner of the patent or his licensee, is anti-competitive and if the Minister is satisfied that the issuance of the non-voluntary licence would remedy such practice.

(7) The authorisation shall not exclude -

- (a) the conclusion of licence contracts by the owner of the patent;
- (b) the continued exercise, by the owner of the patent, of his right under this Act; or
- (c) the issuance of a non-voluntary licence.

(8) Where a third person has been designated by the Minister, the authorisation may only be transferred with the enterprise or business of that person or with the part of the enterprise or business within which the patent invention is being exploited.

(9) Where the exploitation of the invention by a Government agency or third person designated by the Minister is authorised under paragraph (a) of subsection (1), it shall be predominantly for the supply of the market in Sierra Leone.

(10) Upon request of the owner of the patent, the Government agency or of the third person authorised to exploit the patented invention, the Minister may, after hearing the parties, if either or both wish to be heard, vary the terms of the decision authorising the exploitation of the patented invention to the extent that changed circumstances justify such variation.

(11) Upon request of the owner of the patent, the Minister may terminate the authorisation if he is satisfied after hearing the parties, that the circumstances which led to his decision have ceased to exist and are unlikely to recur or that the Government agency or third person designated by him has failed to comply with the terms of the decision.

(12) Notwithstanding subsection (10), the Minister shall not terminate the authorisation if he is satisfied that the need for adequate protection of the legitimate interests of the Government agency or third person designated by him justifies the maintenance of the decision.

(13) Any person aggrieved by a decision of the Minister under this section may appeal to the Court.

27. (1) On a request made to the Registrar after the expiration of a period of four years from the date of filing of a patent application or three years from the date of the grant of the patent, whichever period expires last, the Registrar may issue a non-voluntary licence if he is satisfied that the patented invention is not exploited or is insufficiently exploited, by working the invention locally or by importation, in Sierra Leone.

(2) Notwithstanding subsection (1), a non-voluntary licence shall not be issued if the owner of the patent satisfies the Registrar that circumstances exist which justifies the non-exploitation or insufficient exploitation of the patented invention in Sierra Leone.

(3) A non-voluntary licence shall include -

- (a) the scope and function of the licence;
- (b) the time limit within which the licensee must begin to exploit the patented invention; and
- (c) the remuneration to be paid to the owner of the patent and the conditions of payment.

(4) The beneficiary of a non-voluntary licence may exploit the patented invention in Sierra Leone according to the terms and time limit set out in the licence, and, thereafter, shall exploit the patented invention sufficiently.

(5) Where-

- (a) the invention claimed in a patent cannot be exploited in Sierra Leone without infringing a patent granted on the basis of an application benefiting from an earlier filing or where appropriate, priority date; and
- (b) where the invention claimed in the later patent involves an important technical advance of considerable economic importance in relation to the invention claimed in the earlier patent,

the Court, upon the request of the owner of the later patent, may issue a non-voluntary licence to the extent necessary to avoid infringement of the earlier patent.

(6) Where a non-voluntary licence is issued under subsection (5), the Registrar, upon request of the owner of the earlier patent, shall issue a non-voluntary licence in respect of the later patent.

(7) In the case of a request for the issuance of a non-voluntary licence under subsections (5) and (6), subsection (3) shall apply with such modifications as are necessary, provided that no time line shall be specified.

(8) In the case of non-voluntary licence issued under subsection (5), the transfer may be made only with the later patent, and, in the case of non-voluntary licence issued under subsection (6), only with the earlier patent.

(9) The request for the issuance of a non-voluntary licence shall be subject to the payment of the prescribed fee.

(10) Subsection (4) to 12 of Section 26 shall apply with such modifications as are to this section.

Remuneration to owner of patent.

28. The exploitation of an invention shall be subject to the payment to the owner of the patent of adequate remuneration, taking into account the economic value of the invention.

29. Upon request of the owner of the patent, the Government agency or of the third person authorised to exploit the patented invention, the Minister may, after hearing the parties, if either or both wish to be heard, vary the terms of the decision authorising the exploitation of the patented invention to the extent that changed circumstance justify such variation. Variation of authorisation.

30. (1) Upon the request of the owner of the patent, the Minister shall terminate the authorisation if he is satisfied, after hearing the parties, if either or both wish to be heard, that the circumstances which led to his decision have ceased to exist and are unlikely to recur or that the Government agency or third person designated by him has failed to comply with the terms of the decision. Termination of authorisation.

(2) Notwithstanding subsection (1), the Minister shall not terminate the authorisation if he is satisfied that the need for adequate protection of the legitimate interests of the Government agency or third person designated by him justifies the maintenance of the decision.

31. Where a third person has been designated by the Minister, the authorisation may only be transferred with the enterprise or business of that person or with the part of the enterprise or business within which the patented invention is being exploited. Transfer of authorisation.

32. (1) The exploitation shall be limited to the purpose for which it was authorised. Scope of authorisation.

(2) The authorisation shall not exclude -

- (a) the conclusion of licence contracts by the owner of the patent; or
- (b) the continued exercise, by the owner of the patent, of his rights under subsection (2) of section 22.

(3) The exploitation of the invention by the Government agency or the third person designated by the Minister shall be predominantly for the supply of the market in Sierra Leone.

Evidence of request for licence.

33. (1) A request for the Minister's authorisation shall be accompanied by evidence that the owner of the patent has received, from the person seeking the authorisation, a request for a contractual licence, but such person has been unable to obtain such a licence on reasonable commercial terms and conditions and within a reasonable time.

(2) Subsection (1) shall not apply in cases of national emergency or other circumstances of extreme urgency: but in such cases the owner of the patent shall be notified of the Minister's decision as soon as reasonably practicable.

Right of appeal.

34. The decisions of the Minister under this Part may be the subject of an appeal before the Court.

PART V—UTILITY MODEL CERTIFICATES

Application of provisions relating to patents.

35. (1) Section 36 of this Act shall apply, with such modifications as are necessary, to utility model certificates or applications for utility model certificates.

(2) Where the right to a patent conflicts with the right to a utility model certificate, the case referred to in sections 6 to 9 shall apply as if the word "patent" were replaced by the words "patent or utility model certificate".

Special provisions relating to utility model certificates.

36. (1) An invention qualifies for a utility model certificate if it is new and industrially applicable.

(2) Sections 1 and 3 do not apply in the case of an invention for which a utility model certificate is requested.

(3) A utility model certificate shall expire, without a possibility of renewal, at the end of the seventh year after the date of the filing of the application.

(4) Section 12 does not apply in the case of utility model certificates.

(5) In proceedings under section 65, the Court shall invalidate the utility model certificate on the following grounds:-

- (a) that the claimed invention did not qualify for a utility model certificate, having regard to subsections (1) and (2) of section 2, and subsection (1) of section 4;
- (b) that the description and the claims do not comply with the requirements prescribed by subsection (5) or (6) of section 10; or
- (c) that any drawing which is necessary for the understanding of the invention has not been furnished; or
- (d) that the owner of the utility model certificate is not the inventor or the inventor's successor in title.

(6) Subsection (2) of Section 65 does not apply in a case of the utility model certificate.

37. (1) Prior to the grant or refusal of a patent, an applicant for a patent may, upon payment of the prescribed fee, convert the applicant's application into an application for a utility model certificate, which shall be accorded the filing date of the initial application.

Conversion of patent applications or applications for utility model certificates.

(2) Prior to the grant or refusal of a utility model certificate, an applicant for the utility model certificate may, upon payment of the prescribed fee, convert the applicant's application into a patent application, which shall be accorded the filing date of the initial application.

(3) Subject to this Act, an application shall not be converted under subsection (1) more than once.

PART VI - INTERNATIONAL APPLICATIONS UNDER THE
PATENT COOPERATION TREATY AND THE ARIPO
PROTOCOL

Interpretation of terms relating to the patent cooperation treaty.

38. For the purposes of this Part - "designate", designated Agency", "elected Agency", "international application", "international filing date", "international preliminary examination", and "receiving Agency" have the same meanings as in the Patent Co-operation Treaty.

Filing date and effects of International application designating Sierra Leone.

39. An international application designating Sierra Leone shall, subject to this Part, be treated as an application for a patent filed under this Act having as its filing date the international filing date accorded under the Patent Cooperation Treaty.

Receiving Office.

40. The Registry shall act as receiving office in respect of an international application filed with it by a resident or citizen of Sierra Leone.

Filing of International applications with the Registry.

41. An international application filed with the Registry as receiving Office shall be filed in English and the prescribed transmittal fee shall be paid to the Registrar within one month from the date of receipt of the international application.

Designated Office.

42. The Registry shall act as a designated office in respect of an international application in which Sierra Leone is designated for the purposes of obtaining a national patent under this Act.

Elected Office.

43. The Registry shall act as elected Office in respect of an international application in which Sierra Leone is designated as referred to in section 42 if the applicant elects Sierra Leone for the purposes of international preliminary examination under Chapter II of the Patent Cooperation Treaty.

Processing of international applications.

44. The Registry as designated office or elected office shall not commence processing of an international application designating Sierra Leone before the expiration of the time limit referred to in section 41 except if the applicant complies with the requirements of that section and files with the Agency an express request for early commencement of the processing.

45. The applicant in respect of an international application designating Sierra Leone shall, before the expiration of the time limit applicable under Article 22 or 39 of the Patent Cooperation Treaty or such later time as may be prescribed -

Entering national phase.

- (a) pay the prescribed fee to the Registrar; and
- (b) if the international application under the Patent Cooperation Treaty as a translation into English, file with the Registrar an English translation of the international application

46. If the applicant does not comply with the requirements of section 45 within the time limit referred to in that section, the international application shall be considered withdrawn for the purposes of this Act

Failure to enter national phase.

47. (1) The Registrar shall process international applications in accordance with the Patent Cooperation Treaty, the Regulations and administrative instructions made under it and with this Act.

Processing of international applications in accordance with Treaty.

(2) In the event of conflict, the Patent Cooperation Treaty, the Regulation and the Administrative instructions made under the Treaty shall prevail over the provisions of this Act.

(3) Regulations may be made under this section to provide for the payment of fees, time limits, prescribed languages and other requirements relating to international applications.

48. (1) Relief may be sought in respect of acts committed before the grant of the patent but after the date of international publication was effected in English.

Provisional protection of published international applications.

(2) Where the international publication was effected in a language other than English, subsection (1) shall apply if the applicant had transmitted an English translation of the international publication to the infringer and only in respect of acts committed by the latter after he has received the translation.

Effect of patent granted by ARIPO.

49. A patent in respect of which Sierra Leone is designated or elected state granted by ARIPO by virtue of the ARIPO Protocol shall have the same effect in Sierra Leone as a patent granted under this Act unless the Registrar communicates to ARIPO, in respect of the application, a decision made in accordance with the provisions of the Protocol that if a patent is granted by ARIPO that patent shall have no effect in Sierra Leone.

PART VII - INDUSTRIAL DESIGNS

Regulating of designs.

50. (1) Section 7 shall apply *mutatis mutandis* to this Part

(2) Any creator of an industrial design or his successors in title shall have the exclusive right to exploit the design, to sell or cause to be sold for commercial or industrial purposes the goods in which the design is incorporated, subject to the conditions of this Act and without prejudice to the rights conferred by any other enactment.

(3) The following shall not be registered as industrial designs:-

- (a) designs which serve solely to obtain a technical result and to the extent that it leaves no freedom as regards arbitrary features of appearance;
- (b) designs that consists solely in a change in the colour of designs already known;
- (c) works of sculpture, architecture, painting, engraving, animating, embroidery and photography and any other inventions of purely artistic nature; or
- (e) designs contrary to public order or morality.

Application for registration of industrial designs.

51. (1) The application for registration of an industrial design shall be filed with the Registrar and shall contain-

- (a) request;
- (b) drawings;
- (c) photographs or other adequate graphic representations of the article embodying the industrial design;
- (d) an indication of the kinds of products for which the industrial design is to be used; and
- (e) a specimen of the article embodying the industrial design, where the industrial design is two-dimensional.

(2) The application shall be subject to the payment of the prescribed application fee.

(3) Where the applicant is not the creator, the request shall be accompanied by a statement justifying the applicant's right to registration of the industrial design.

(4) Section 15 shall apply *mutatis mutandis* to this section.

(5) Two or more industrial designs may be the subject of the same application, provided they relate to the same class of the international classification or to the same set or composition of articles.

(6) The application, at the time of filing, may contain a request that the publication of the industrial design, upon registration, be deferred for a period not exceeding twelve months from the date of filing or, if priority is claimed, from the date of priority, of the application.

(7) The applicant may withdraw the application at any time during its pendency.

52. (1) The Registrar shall accord as the filing date the date of receipt of the application if at the time of receipt, the application contained indications allowing the identity of the applicant to be established and the required graphic representation of the article embodying the industrial design. Filing date.

(2) Paragraph (b) of subsection (1) of section 18 shall apply *mutatis mutandis* to this section.

Examination
of
applications.

53. After according a filing date, the Registrar shall examine whether the application complies with the requirements of subsections (1) and (3) of section 51, whether the application fee has been paid and whether the industrial design complies with the definition of "industrial design" in section 1 and the requirements of subsection (3) of section 50.

Registration
of industrial
designs.

54. Where the Registrar is satisfied that the conditions referred to in section 53 are fulfilled, he shall register the industrial design and issue to the applicant a certificate of registration of the industrial design; otherwise, he shall reject the application.

Publication of
details of
industrial
designs

55. (1) The Registrar shall publish the following details for each industrial design granted:-

- (a) the number of the industrial design;
- (b) the name and address of the owner of the design;
- (c) the name and address of the creator of the design, unless he has requested not to be mentioned on the certificate of registration;
- (d) the name and address of the agent if there is one;
- (e) the date of filing of the application;
- (f) mention of priority, if priority has been validly claimed;
- (g) the date of registration of the design;
- (h) the title of the design; and
- (i) a reproduction of a specimen of the design

(2) The Registrar shall establish and determine the conditions of publication of the specification of the model, specimen or design and shall make them available for inspection upon request.

(3) Notwithstanding subsection (1), where a request has been made under subsection (6) of section 51 for the deferment of publication upon registration of the industrial design, neither the representation of the design nor any file relating to the application shall be open to public inspection.

(4) After granting the request for deferment of publication, the Registrar shall publish a mention of such deferment and information identifying the registered owner and indicating the filing date of the application, the length of the period for which deferment has been requested and any other prescribed particulars.

(5) The Registrar shall publish the registered industrial design at the expiry date of the period of deferment.

(6) The institution of legal proceedings on the basis of a registered industrial design during the period of deferment of publication shall be subject to the condition that the information contained in the Register and in the file relating to the application has been communicated to the person against whom the action is brought.

56. Where designs have not been claimed by their owner within two years following expiration of the period of protection, they shall be donated to an educational or research or cultural institution determined by the Minister.

Donation of
industrial
designs.

57. (1) The exploitation of a registered industrial design in Sierra Leone by persons other than the registered owner shall require the agreement of the owner.

Rights
conferred by
registration of
industrial
designs, etc.

(2) For the purposes of this Act, "exploitation of a registered industrial design" means the making, selling or importation of articles incorporating the industrial design.

(3) The rights conferred by registration of an industrial design shall not extend to acts in respect of a product embodying the protected industrial design which has been put on the market in Sierra Leone by the owner of the design or with his consent.

(4) The registered owner of an industrial design shall, in addition to any other rights, remedies or actions available to him, have the right to institute legal proceedings against any person who infringes the industrial design by performing, without his agreement, any of the acts referred to in subsection (2) or who performs acts which make it likely that infringement will occur.

(5) An industrial design in respect of which Sierra Leone is a designated state registered by ARIPO by virtue of the Harare protocol shall have the same effect in Sierra Leone under this Act unless the Registrar has communicated to ARIPO, in accordance with the provisions of the Protocol that if a registration is made by ARIPO, it shall have no effect in Sierra Leone.

Duration and renewal of industrial designs.

58. (1) The registration of an industrial design shall be for a period of five years from the filing date of the application for registration.

(2) The registration may be renewed for two further consecutive periods of five years on the payment of the prescribed fee.

(3) A period of grace of six months shall be allowed for the late payment of the renewal fee on payment of the prescribed surcharge.

(4) Where industrial design has elapsed due to the non-payment of the renewal fee within the prescribed period, the owner of the design may, in the prescribed manner and on the payment of the prescribed fee, apply to the Registrar for the restoration of the industrial design.

(5) If the Registrar is satisfied that the omission to pay was unintentional and that no undue delay has occurred in the making of the application, he shall advertise the application in the prescribed manner and any person may, within the prescribed period, give notice objecting to the restoration of the industrial design.

PART VIII - GENERAL PROVISIONS

59. (1) All contracts assigning applications, patents or industrial designs shall be in writing and shall be signed by the parties to the contracts otherwise they shall not be valid. Changes in ownership.

(2) Any change in the ownership of an application, a patent or an industrial design shall be recorded in the respective Register, on payment of the prescribed fee and, in the case of an application, published by the Registrar.

(3) The change in ownership shall have no effect against third parties until such recording is effected.

(4) In the absence of any agreement to the contrary between the parties, joint owners of an application or a patent or industrial design may separately transfer their shares, exploit or prevent any person from exploiting the protected patent or industrial design but may only jointly grant permission to any third person to exploit the patent or design.

60. A licence contract shall not be valid unless it is in writing and signed by the parties to the contract. Form of licence contracts.

61. (1) A licence contract concerning a patent granted or a registered industrial design, or an application for it, shall be submitted to the Registrar who shall keep its contents confidential but shall record it and publish a reference to it. Recording and publication of licence contracts.

(2) The licence contract shall have no effect against third parties until the recording is effected.

62. In the absence of any provision to the contrary in the licence contract, the licensee shall be entitled to take any of the actions referred to in sections 22 and 57 with regard to the invention and industrial design respectively. Rights of licensee.

63. (1) In the absence of any provision to the contrary in the licence contract, the licensor may grant permission to any third person to do, and may himself do any of the acts which constitute the exercise of rights of ownership. Rights of licensor to grant further licences and to use the inventions.

(2) If the licence contract provides that such contract or the permission granted by it is exclusive, the licensor may neither grant to any third person to do any of the acts referred to in sections 22 and 57 and covered by the licence contract, or do himself any of those acts; and the licensee shall be considered as an exclusive licensee for the purposes of this Act.

Surrender of patent or industrial designs.

64. (1) A patent or industrial design may be surrendered by its owner.

(2) The surrender may be limited to one or more claims of the patent or industrial design.

(3) The surrender shall promptly be recorded in the Register and published by the Registrar and the surrender shall be effective only after it has been published.

(4) If a licence has been recorded in the Register, surrender of the patent or industrial design shall only be registered upon the submission of a declaration by which the licensee consents to the surrender, unless the licensee expressly waived this right in the licence contract.

Invalidation of patent or industrial designs.

65. (1) Any interested person may request the court to invalidate a patent or industrial designs.

(2) The court shall invalidate the patent or industrial design if the person requesting the invalidation proves that the patent or industrial design is not patentable or registrable under this Act or if the owner of the patent is not the inventor or his successor in title or if the owner of the industrial design is not the creator or his successor-in-title.

(3) Any invalidated patent or industrial design or claim or part of a claim, shall be void from the date of the grant of the patent or industrial design.

(4) The decision of the court shall be notified to the Registrar who shall record it and publish a reference to it as soon as possible.

66. (1) The Registry shall maintain a register for patents and utility model certificates. Registrar to keep register of patents and utility model certificates.

(2) All the recordings provided for under this Act shall be recorded in the register.

(3) The register shall be open to the public and a person may obtain an extract from the register in the prescribed manner.

67. (1) The Registrar shall maintain separate registers for patents and industrial designs. Registers of patents and industrial designs

(2) The Registers may be consulted by any person, and any person may obtain extracts from the Registers under the prescribed conditions.

68. The Registrar may correct any error of translation or transcription, clerical error or mistake in any application or document filed with the Registry or in any recording effected pursuant to this Act. Correction of errors.

69. Where the Registrar is satisfied that the circumstances justify it, he may, upon receiving a written request, extend the time for doing any act or taking any proceeding under this Act, upon notice to the parties concerned and upon the terms as the Registrar may direct. Extension of time.

70. The Registrar shall publish in the *Gazette* all the publications provided for in this Act. Publication in the Gazette

71. Subject to subsection (1) of section 23 and subsection (3) of section 50, an infringement shall consist of performance of any act referred to in sections 22 and 57 in Sierra Leone by a person other than the owner of the title of protection and without the consent of the owner. Infringement.

72. On the request of the owner of the patent or industrial design, the court may grant- Relief.

- (a) an injunction to prevent an imminent infringement or to prohibit the continuation of the infringement;
- (b) damages; or
- (d) any other remedy in law.

Criminal proceedings.

73. Any person who knowingly does anything which constitutes an infringement as defined in section 71 commits an offence and is liable on conviction to a fine not exceeding Le60,000,000.00 or to imprisonment for a term not exceeding one year or to both the fine and imprisonment.

Legal proceedings by licensee.

74. (1) An exclusive licensee within the meaning of subsection (2) of section 63 may, by registered letter, request the owner of the patent or industrial design to institute legal proceedings for a specific relief with respect to any infringement specified by the licensee.

(2) The licensee may, if the owner of the patent or industrial design refuses to institute legal proceedings within three months from the request, after giving notice to the owner of the patent or industrial design, institute such proceedings in his own name; and the owner of the patent or industrial design may join in the proceedings.

(3) Before the end of the three months period referred to in subsection (2), the Court may, on the request of the licensee, grant an appropriate injunction to prevent infringement or to prohibit its continuation, where the licensee shows that immediate action is necessary to avoid substantial damage.

Burden of proof.

75. (1) For the purposes of civil proceedings, in respect of the violation of the right of the owner of the patent referred to in section 71, where the subject-matter of the patent is a process for obtaining a product, a burden of establishing that the product was not made by the process shall be on the alleged infringer if either of the following conditions is fulfilled:-

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

(2) In requiring the production of evidence, the Court before which the proceedings referred to in subsection (1) take place shall take into account the legitimate interests of the alleged infringer in not disclosing his manufacturing and business secrets.

76. The provisions of any international treaty in respect of industrial property to which Sierra Leone is a party shall apply to matters dealt with by this Act and, in case of conflict with this Act, the provisions of the treaty shall prevail. Application of international treaties

77. (1) The Minister may by statutory instrument, make regulations for the implementation of this Act. Regulations.

(2) The regulations may, in particular, provide for the payment of fees in connection with applications for the grant of patents and for the registration of industrial designs and matters related to them.

(3) The Minister shall ensure that the regulations referred to in subsection (2), in particular with regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection.

78. The Registrar may issue administrative instructions relating to the procedures under this Act and the regulations as well as to any other directions under this Act. Administration instructions.

79. The following enactments are repealed:-

- (a) United Kingdom Designs (Protection) Act; Repeals. Cap. 246
- (b) Patents Act. Cap 247

Transitional provisions.

80. (1) Notwithstanding section 79, patents granted and industrial designs registered under the repealed enactments, shall remain in force but shall, subject to subsection (2) and (3), be deemed to have been registered under this Act.

(2) Patents granted under the repealed enactments shall remain in force for the unexpired portion of the period of protection provided under this Act, subject to the payment of annual maintenance fees.

(3) Industrial designs registered under the repealed enactments shall be due for the renewal within the same period as provided under subsection (2) of section 55.

SCHEDULE

(Section 16)

ARTICLE 4—PARIS CONVENTION

A. (1) Any person who has duly filed an application for a patent, or for the registration of a utility model, or of an industrial design, or of a trademark, in one of the countries of the Union, or his successor in title, shall enjoy, for the purpose of filing in the other countries, a right of priority during the periods hereinafter fixed.

(2) Any filing that is equivalent to a regular filing under the domestic legislation of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognised as giving rise to the right of priority.

(3) By a regular national filing is meant any filing that is adequate to establish the date on which the application was filed in the country concerned, whatever may be subsequent fate of the application.

B. Consequently, any subsequent filing in any of the other countries of the Union before the expiration of the periods referred to above shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, the publication or exploration of the invention, the putting on sale copies of the design, or the use of the mark, and such acts cannot give rise to any third-party right or any right of personal possession. Rights acquired by third parties

before the date of the first application that serves as the basis of the right of priority are reserved in accordance with the domestic legislation of each country of the Union.

C. (1) The periods of priority referred to above shall be twelve months for patents and utility models, and six months for industrial designs and trademarks.

(2) These periods shall start from the date of filing of the first application; the day of filing shall not be included in the period.

(3) If the last day of the period is an official holiday, or a day when the office is not open for the filing of applications in the country where protection is claimed, the period shall be extended until the first following working day.

(4) A subsequent application concerning the same object as previous first application within the meaning of paragraph (2) above, filed in the same country of the Union, shall be considered as the first application, of which filing date shall be the starting point of the period of priority, if, at the time of filing the subsequent application, the said previous application has been withdrawn, abandoned, or refused, without having been laid open to public inspection and without leaving any rights outstanding, and if it has not yet served as a basis for claiming a right of priority.

D. (1) Any person desiring to take advantage of the priority of a previous filing shall be required to make a declaration indicating the date of such filing and country in which it was made. Each country shall determine the latest date on which such declaration must be made.

(2) These Particulars shall be mention in the publications issued by the competent authority, and in particular in the patents and specifications relating thereto.

(3) The countries of the Union may require any person making a declaration of priority to produce a copy of the application (description, drawings, etc.) previously filed. The copy, certified as correct by the authority that received such application, shall not require any authentication, and may in any case be filed, without fee, at any time within three months of the filing of the subsequent application. They may require it to be accompanied by a certificate from the same authority showing the date of filing, and by a translation.

(4) No other formalities may be required for the declaration of priority at the time of filing the application. Each country of the Union shall determine the consequences of failure to comply with the formalities prescribed by this Article, but such consequences shall in no case go beyond the loss of the right of priority.

(5) Subsequently, further proof may be required.

Any person who avails himself of the priority of a previous application shall be required to specify the number of that application; this number shall be published as provided for by paragraph (2), above.

E. (1) Where an industrial design is filed in a country by virtue of a right of priority based on the filing of a utility model, the period of priority shall be the same as that fixed for industrial designs.

(2) Furthermore, it is permissible to file a utility model in a country by virtue of a right of priority based on the filing of a patent application, and *vice versa*.

F. No country of the Union may refuse a priority or a patent application on the ground that the applicant claims multiple priorities, even if they originate in different countries, or on the ground that an application claiming one or more priorities contains one or more elements that were not included in the application or applications whose priority is claimed, provided that, in both cases, there is unity within the meaning of the law of the country.

With respect to the elements not included in the application or applications whose priority is claimed, the filing of subsequent application shall give rise to a right of priority under ordinary conditions.

G (1) If the examination reveals that an application for a patent contains more than one invention, the applicant may divide the application into certain number of divisional applications and preserve as the date of each the date of the initial application and the benefit of the right of priority, if any.

(2) The applicant may also, on his own initiative, divide a patent application and preserve as the date of each divisional application the date of the initial application and the benefit of the right of priority, if any. Each country of the Union shall have the right to determine the conditions under which such division shall be authorised.

H. Priority may not be refused on the ground that certain elements of the invention for which priority is claimed do not appear among the claims formulated in the application in the country of origin, provided that the application documents as a whole specifically disclose such elements.

I. (1) Application for inventors' certificate filed in a country in which applicants have the right to apply at their own option either for a patent or for an inventors' certificate shall give rise to the right of priority provided for by this Article, under the same conditions and with the same effects as applications for patents.

(2) In a country in which applicants have a right to apply at their own option either for a patent or for an inventors' certificate.

ARTICLE 4bis

[Patents: Independence of Patents Obtained for the Same Invention in Different Countries]

(1) Patents applied for in the various countries of the Union by nationals of countries of the Union shall be independent of patents obtained for the same invention in other countries, whether members of the Union or not.

(2) The foregoing provision is to be understood in an unrestricted sense, in particular, in the sense that patents applied for during the period of priority are independent, both as regards the grounds for nullity and forfeiture, and as regards their normal duration.

(3) The provision shall apply to all patents existing at the time when it comes into effect.

(4) Similarly, it shall apply, in the case of the accession of new countries, to patents in existence on either side at the time of accession.

(5) Patents obtained with the benefit of priority shall, in the various countries of the Union, have a duration equal to that which they would have, had they been applied for or granted without the benefit of priority.

ARTICLE 4quarter

[Patents: Mention of the Inventor in the Patent]

The inventor shall have the right to be mentioned as such in the patent.

ARTICLE 4quarter

[Patents: Patentability in case of Restrictions of Sale by Law]

The grant of a patent shall not be refused and a patent shall not be invalidated on the ground that the sale of the patented product or of a product obtained by means of a patented process is subject to restrictions or limitations resulting from the domestic law.

Passed in Parliament this *4th day of September*, in the year of our Lord two thousand and twelve.

IBRAHIM S. SESAY,
Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correct printed copy of the said Bill.

IBRAHIM S. SESAY,
Clerk of Parliament.