



Republic of Namibia
Annotated Statutes

Patents, Designs, Trade Marks and Copyright Act 9 of 1916 (SA), certain sections only

(SA GG 727)

came into force on date of publication: 15 April 1916

Only the portions of this Act relating to patents and designs remain in force in Namibia, in truncated form, via the Patents, Designs, Trade Marks and Copyright Proclamation 17 of 1923 (OG 112).

APPLICABILITY TO SOUTH WEST AFRICA: The portions of this Act relating to patents were made applicable to South West Africa *in part* by section 5 of the Patents, Designs, Trade Marks and Copyright Proclamation 17 of 1923 (OG 112), with the sections in brackets appearing to be the ones which fit the descriptions given in the text:

The provisions of the Union Act with regard to the effect [s.42] and duration [s.38] of a patent, the renewal [nothing on renewal, but ss. 53-54 cover restoration], extension [ss.50-51], surrender and revocation [ss. 55-58] of patents, the grant of compulsory licences [s.59], the amendment of Specifications [ss.47-49], actions for infringement [ss.61-65] and the rectification of the register [s.13] shall, insofar as such provisions are applicable, apply, *mutatis mutandis*, to patents granted under this Proclamation.

The "Union Act" is defined in section 18 of Proclamation 17 of 1923 as "the Union Patents, Designs, Trade Marks and Copyright Act, 1916 (Act No. 9 of 1916) and any amendment thereof". The portions of the Act on patents were replaced in South Africa by the *Patents Act 37 of 1952* (SA GG 4863), which was not applicable to South West Africa.

The portions of this Act relating to designs were made applicable to South West Africa *in part* by section 9 of the Patents, Designs, Trade Marks and Copyright Proclamation 17 of 1923 (OG 112), with the sections in brackets appearing to be the ones which fit the descriptions given in the text:

The provisions of the Union Act with regard to the definition of design [s.76], the effect of registration [ss.93-94], the duration and renewal of Copyright in a design [s.87; nothing on "renewal", but this section covers extensions], the assignment and transmission of designs [ss.85,88], the cancellation of the registration of a design [s.84], the marking of articles [s.89], and the rectification of the register [s.86] shall, in so far as such provisions are applicable, apply, *mutatis mutandis*, to designs registered under this Proclamation.

The "Union Act" is defined in section 18 of Proclamation 17 of 1923 as "the Union Patents, Designs, Trade Marks and Copyright Act, 1916 (Act No. 9 of 1916) and any amendment thereof". The portions of the Act on designs were replaced in South Africa by the *Designs Act 57 of 1967* (RSA GG 1732), which was not applicable to South West Africa.

Section 17 of the Patents, Designs, Trade Marks and Copyright Proclamation 17 of 1923 originally made the provisions of Act 9 of 1916 relating to copyright applicable to South West Africa. These portions of the Act were subsequently replaced by the *Copyright Act 63 of 1965* (RSA GG 1128), which was made expressly applicable to South West Africa.

Section 13 of the Patents, Designs, Trade Marks and Copyright Proclamation 17 of 1923 originally made the provisions of Act 9 of 1916 relating to trademarks applicable to South West Africa. These portions of the Act were subsequently replaced by the *Trade Marks Act 62 of 1963* (RSA GG 540) in South Africa, and by the *Trade Marks in South West Africa Act 48 of 1973* (RSA GG 3913) in South West Africa.

Patents, Designs, Trade Marks and Copyright Act 9 of 1916 (SA), certain sections only

The definition of "Union Act" in section 18 of the Patents, Designs, Trade Marks and Copyright Proclamation 17 of 1923 made it clear that the specified portions of the Act applied to South West Africa along with "any amendment thereof".

TRANSFER TO SOUTH WEST AFRICA: The administration of this Act was transferred to South West Africa by the Executive Powers (Commerce) Transfer Proclamation, AG 28 of 1978, dated 28 April 1978. There were no amendments to the Act in South Africa after that date.

as amended by

Patents, Designs and Trade Marks Amendment

Act 19 of 1947 (SA) (SA GG 3809)

came into force on date of publication: 6 May 1947, with the exception of sections 2-13 and 22-25, which were brought into force on 20 December 1947 by SA Proc. 379/1947 (SA GG 3908)

All remaining portions of this Act were REPEALED by the Industrial Property Act 1 of 2012 (GG 4907).

ACT

To Consolidate and Amend the Laws relating to the granting of Letters Patent for inventions and for the registration of Patents, Designs, Trade Marks and Copyright.

[The Government Gazette does not state the date of assent or which language version was signed.]

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BE IT ENACTED by the King's Most Excellent Majesty the Senate, and the House of Assembly of the Union of South Africa, as follows:-

[The Republic of South Africa Constitution Act 32 of 1961 provided in Article 3 that as from 31 May 1961, any reference to the Union of South Africa in any law in force in the Union of South Africa or in any other territory in respect of which Parliament is competent to legislate shall be construed as a reference to the Republic, and a reference to the Governor-General shall be construed as a reference to the Republic or the State President as the circumstances may require.]

CHAPTER I

PATENTS

PART II – REGISTRATION OF PATENTS

Correction of errors and omissions etc., in register

13. (1) The registrar may, on request in writing, accompanied by the prescribed fee, correct any clerical error in or in connection with an application for a patent or in any patent or any specification.

(2) The court may, on the application of any person who complains of a wrong entry or wrong omission of an entry or of any other particulars in the register of patents, make such order for the striking out, insertion or amendment of such entry as it shall deem necessary.

(3) The court may, in any proceedings under this section, decide any question that it may be necessary or expedient to decide in connection therewith.

PART III – PROCEDURE FOR OBTAINING THE GRANT OF LETTERS PATENT

*(c) Patents and their Sealing***Duration of patent**

38. (1) The term limited in every patent for the duration thereof, shall, save as otherwise provided by this Act, be fourteen years from its date.

(2) Every patent shall cease if the patentee fails to pay the prescribed fees within the prescribed times: Provided that the registrar, upon the application of the patentee, shall, on receipt of such additional fee, not exceeding ten pounds, as may be prescribed, enlarge the time to an extent specified in an application made for the purpose, not exceeding three months.

[A fee not exceeding ten pounds is equivalent to a fee not exceeding N\$20.]

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

Effect of a patent

42. The effect of a patent shall be to grant to the patentee, subject to the provisions of this Act and the conditions of the patent, full power, sole privilege and authority, by himself, his agents, and licencees during the term of the patent to make, use, exercise and vend the invention within the Union in such manner as to him seems meet, so that he shall have and enjoy the whole profit and advantage accruing by reason of the invention during the term of the patent.

(d) Amendment of Specification

Manner of obtaining amendment of specifications and conditions on which the same may be allowed

47. (1) An applicant or a patentee may by request in writing left at the patent office seek leave to amend his specification, including drawings forming part thereof, by way of disclaimer, correction or explanation stating the nature of the amendment and the reasons for it. Where two or more persons are jointly entitled to the benefit of a patent the request shall be made by those persons or by some or one of them with the written consent of the others.

(2) The request and the nature of such proposed amendment shall be advertised in the prescribed form and manner, and, at any time within three months from its first advertisement, any person may give notice, at the patent office, of opposition to the amendment.

(3) Where such notice is given, the registrar shall give notice of the opposition to the person making the request and shall hear and decide the case, subject to an appeal to the law officer.

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

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

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

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

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

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

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

Jurisdiction of court to allow amendment of specification in an action for infringement

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48. (1) In any action for infringement of a patent and in a proceeding for the revocation of a patent the court may, by order allow the patentee, subject to such terms as to costs, advertisement or otherwise as the court may impose, to amend his specification by way of disclaimer: Provided that no amendment shall be so allowed that would make the specification, as amended, claim an invention substantially different from the invention claimed by the specification as it stood before amendment; and where an application for such an order is made to the court notice of the application shall be given to the registrar, and the registrar shall have the right to appear and be heard.

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

Advertisement of amendment of specification

49. Every amendment of a specification shall be advertised in manner directed by the registrar.

*(e) Extension of Patents***Mode of obtaining extension of patent**

50. (1) A patentee may, after advertising in manner directed by rule or order of the court his intention so to do, present a petition to the court that his patent may be extended for a further term, but such petition must be presented at least six months before the time limited for the expiration of the patent.

(2) Any person may give written notice to the registrar of the court, objecting to the extension.

(3) The court may hear the petition and the petitioner and any person who has given such notice of objection. The registrar of patents shall also be entitled to appear and be heard.

Grounds on which and period for which extension may be granted

51. (1) The court shall, in considering its decision, have regard to the nature and merits of the invention in relation to the public and to the profits made by the patentee as such and to all the circumstances of the case.

(2) The court, if it is of opinion that the patentee has been inadequately remunerated by his patent, may order the extension of the term of the patent for a further term not exceeding seven, or in exceptional cases, fourteen years, or order the grant of a new patent for the term therein mentioned, and containing any restrictions, conditions and provisions that the court may think fit.

*(g) Restoration of Lapsed Patent***Application for restoration of patent**

53. (1) Where any patent has become void owing to the failure of the patentee to pay any prescribed fee within the prescribed time, the patentee may apply to the registrar in the prescribed manner for an order for the restoration of the patent.

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

(3) If it appears from the statement that the omission 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 within such time as may be prescribed, any person may give notice of opposition at the patent office.

Opposition to application

54. (1) Where such notice of opposition is given the registrar shall inform the applicant thereof, and shall forthwith transmit to the registrar of the court the documents relating to the application and to the opposition thereto.

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

(3) The provisions of sections *thirty* to *thirty-five* inclusive shall *mutatis mutandis* apply in respect of the hearing and determination of opposed applications for the restoration of a patent.

(h) Revocation of Patent

Grounds of, and persons entitled to petition for, revocation of patent

55. (1) Application for revocation of a patent may be made by petition to the court, upon any one or more of the grounds on which the grant of the patent might have been opposed.

(2) Such petition may be presented by the following persons, and no other:-

- (a) The Minister of Justice or any person authorized by him;
- (b) any person who alleges that the patent has been obtained in fraud of his rights or of the rights of any person under or through whom he claims;
- (c) any person who alleges that he, or any person under or through whom he claims, was the inventor of any invention included in the claim of the patentee;
- (d) any person who alleges that he or any person under or through whom he claims an interest in any trade, business, or manufacture has publicly manufactured, used or sold within the Union before the date of the patent anything claimed by the patentee as his invention.

Particulars to accompany petition for revocation

56. (1) The petitioner must deliver with his petition particulars of the objections on which he means to rely, and if one of such objections is want of novelty he must state the time and place of the previous publication or user alleged by him, with the particulars required in sub-section (3) of section *twenty-seven*. No evidence shall, except by leave of the court, be admitted in proof of any objection of which particulars are not so delivered.

(2) Particulars delivered may be from time to time amended by leave of the court.

(3) The defendant shall have the right to begin and give evidence in support of his patent and if the petitioner produces evidence against the validity of the patent the defendant shall be allowed to bring rebutting evidence.

(4) The court may, if it thinks fit, call in the aid of an assessor specially qualified to assist it in the hearing of the case; and any remuneration of such assessor fixed by the court shall be included in the costs of the case and may be dealt with at the discretion of the court as part of such costs.

Grant of patent to inventor where patent revoked on grounds of fraud

57. Where a patent is revoked on the ground of fraud, or where a patent fraudulently obtained has been surrendered and revoked, the registrar may, on the application of the inventor, his assignee or legal representative, made in accordance with the provisions of this Chapter, grant to him a patent in lieu of and bearing the same date as the patent so revoked: Provided that no action shall be brought for any infringement of the patent so granted committed before the actual date when such patent was granted.

Revocation of patent on surrender by patentee

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

(2) Where an action for infringement or a proceeding for the revocation of the patent is pending in any court, the registrar shall not accept the offer for the surrender, or make an order for the revocation of the patent, except by leave of the court, or by consent of the parties to the action or proceeding.

(3) In the case of a patent granted under section *eight*, the patentee may offer to surrender his patent to the extent of its application to any particular Province other than that in which the provincial patent was granted, and the registrar may in his discretion, after giving notice of the offer and hearing all parties who desire to be heard, accept the offer and shall thereupon endorse the patent accordingly. The endorsement shall have the effect of excepting the particular Province aforesaid from the patent.

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

PART IV – WORKING OF PATENTS AND COMPULSORY LICENCES

Grounds on which compulsory licences granted or patent revoked

59. (1) Any person interested may, after the expiration of three years from the granting of the patent, present a petition to the registrar alleging that the reasonable requirements of the public with respect to a patented invention have not been satisfied and praying for the grant of a compulsory licence or in the alternative for the revocation of the patent.

[subsection (1) amended by Act 19 of 1947]

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(2) The registrar shall consider the petition and if the parties do not come to an arrangement between themselves the registrar, if satisfied that a *prima facie* case has been made out, shall refer the petition to the court, and, if the registrar is not so satisfied, he may dismiss the petition.

(3) Where any such petition is referred by the registrar to the court, and it is proved to the satisfaction of the court that the reasonable requirements of the public with reference to the patented invention have not been satisfied, the patentee may be ordered by rule or order to grant licences on such terms as the court thinks just or if the court is of opinion that the reasonable requirements of the public will not be satisfied by the grant of licences the court may order the revocation of the patent: Provided that no order of revocation shall be made before the expiration of four years from the date of the patent or if the patentee gives satisfactory reasons for his default: Provided further that no order for revocation shall be made which is at variance with any treaty, convention, arrangement or engagement applying to the Union and any other country.

[subsection (3) amended by Act 19 of 1947]

(4) On the hearing of any petition under this section the patentee and any person claiming an interest in the patent, as exclusive licensee or otherwise, shall be made parties to the proceedings, and the registrar shall be entitled to appear and be heard.

(5) For the purposes of this section, the reasonable requirements of the public shall not be deemed to have been satisfied -

- (a) if, by reason of the default of the patentee to manufacture to an adequate extent and supply on reasonable terms the patented article, or any parts thereof which are necessary for its efficient working, or to carry on the patented process to an adequate extent, or to grant licences on reasonable terms, any existing trade or industry or the establishment of any new trade or industry in the Union is unfairly prejudiced, or the demand for the patented article or the article produced by the patented process is not reasonably met; or
- (b) if any trade or industry in the Union is unfairly prejudiced by the conditions attached by the patentee, before or after the commencement of this Chapter, to purchase, hire, or use of the patented article, or to the using or working of the patented process.

(6) An order of the court directing the grant of any licence under this section shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a licence, and made between the parties to the proceeding.

PART V – INFRINGEMENT OF PATENTS

Grounds disentitling patentee to recover damages

61. A patentee shall not be entitled to recover any damages in respect of any infringement of a patent granted after the commencement of this Chapter from any defendant who proves that at the date of the infringement he was not aware, nor had reasonable means of making himself aware, of the existence of the patent, and the marking of an article with the word “patent,” “patented,” or any word or words expressing or implying that a patent has been obtained for the article, stamped, engraved, impressed on, or otherwise applied to the article, shall not be deemed to constitute notice of the existence of the patent unless the word or words are accompanied by the year and number of the patent: Provided that nothing in this section shall affect any proceedings for an interdict.

Procedure and provisions to be applied in action for infringement

- 62.** In an action for infringement of a patent the following provisions shall apply:-
- (a) Any ground upon which a patent may be revoked under this Act may be applied by way of defence.
 - (b) The defendant, if entitled to present a petition to the court for the revocation of the patent, may, without presenting such a petition, apply in accordance with the rules of court by way of counterclaim in the action for the revocation of the patent.
 - (c) The plaintiff must deliver with his declaration or by order of the court at any subsequent time particulars of the infringement complained of.

[The word "plaintiff" is misspelt in the *Government Gazette*, as reproduced above.]

- (d) The defendant must deliver with his statement of defence or by order of the court at any subsequent time particulars of any objections on which he relies in support thereof.
- (e) If the defendant disputes the validity of the patent the particulars delivered by him must state the grounds on which he disputes it, and if one of those grounds is want of novelty must state the time and place of the previous publications or user alleged by him, with the particulars required in sub-section (3) of section *twenty-seven*.
- (f) At the hearing no evidence shall, except by leave of the court, be admitted of which particulars have not been so delivered.
- (g) Particulars delivered may from time to time be amended by leave of the court.

Summoning of assessors to assist the court

63. In any action for infringement of a patent the court may, if it thinks fit, call in the aid of an assessor specially qualified to assist it in the hearing of the case, upon the terms as to remuneration already specified in sub-section (4) of section *fifty-six*.

Jurisdiction of the court in actions for infringement

- 64.** In any action for infringement -
- (a) if the complete specification contains two or more claims, the invalidity of any one claim shall not, unless it is otherwise determined by the court, affect the validity of any other claim or the validity of the patent in so far as it relates to any valid claim;
 - (b) the court may, if it is of opinion that any claim in the complete specification is invalid, order the plaintiff to pay the defendant the whole or such part of the costs of the action as it thinks just, notwithstanding that the patent is held to be valid so far as it relates to any other claim, and order the patentee to amend his specification by way of disclaimer and subject to such terms and conditions as are or may be imposed by section *forty-eight*;
 - (c) the court may certify that the validity of the patent came in question; and if the court so certifies then in any subsequent action for infringement the plaintiff in that action on obtaining a final order or judgment in his favour shall have his full costs,

charges, and expenses as between attorney and client, unless the court trying the action certifies that he ought not to have the same;

- (d) the court may, on the application of either party, make such order for an interdict, inspection or account, and impose such terms and such directions respecting the same and the proceedings thereon as the court may see fit.

Action and interdict arising from threat of legal proceedings

65. Where any person claiming to be the patentee of an invention, by circulars, advertisements or otherwise, threaten any other person with any legal proceedings or liability in respect of any alleged infringement of the patent, any person aggrieved thereby may bring an action against him, and may obtain an interdict against the continuance of such threat, and may recover such damages (if any), as he has sustained thereby, if the alleged infringement, to which the threat: related, was not in fact an infringement of any legal rights of the person making the threats: Provided that this section shall not apply if the person making such threats, with due diligence, commences and prosecutes an action for infringement of his patent.

CHAPTER II

DESIGNS

Interpretation of terms used in this chapter

76. For the purposes of this Chapter -

“article”, in relation to designs, shall mean any article of manufacture and any substance artificial or natural or partly artificial and partly natural;

“copyright”, in relation to designs, shall mean the exclusive right to apply a design to any article in any class in which the design is registered;

“design” shall mean any design applicable to any article whether for the pattern, for the shape or configuration, or for the ornament thereof or for any two or more of such purposes and by whatever means it is applicable whether by printing, painting, embroidering, weaving, sewing modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined, not being a design for sculpture;

“proprietor of a new or original design” shall -

- (a) where the author of the design executes the work for some other person, mean the person for whom the design is so executed; and
- (b) where any person acquires the design or the right to apply the design to any article either exclusively of any other person or otherwise, mean, in the respect and to the extent in, and to which the design or right has been so acquired, the person by whom the design or right is so acquired; and
- (c) in any other case, mean the author of the design and where the property in or the right to apply the design has devolved from the original proprietor upon any other person shall include that other person;

“Provincial Designs Act” shall mean any law relating to designs in force in a Province on the thirty-first day of May, 1910, and shall include all regulations in force under such law.

PART II – REGISTRATION OF DESIGNS

Cancellation of registration

84. The registrar may, on request in writing accompanied by the prescribed fee cancel the registration of a design, either wholly or in respect of any particular goods in connection with which the design is registered.

Registration of transfer of rights in a registered design

85. (1) Where a person becomes entitled, by assignment, transmission or other operation of law to the copyright in a registered design, the registrar shall, on request and on proof of title to his satisfaction, register him as the proprietor of the design.

(2) Where a person becomes entitled to any interest in a design the registrar shall, on request and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the register of designs.

Jurisdiction of court to rectify register of designs

86. (1) The court may, on the application of any person aggrieved by the non-insertion in, or omission from, the register of designs of any entry, or by any entry made without sufficient cause or wrongly remaining in such register, or by an error or defect in any entry in such register, give such order for making, expunging or varying such entry as it may think fit.

(2) The court may, in any proceedings under this section, decide any question that it may be necessary or expedient to decide in connection with the register and may, if it thinks fit, direct that any Province shall be excepted from the effect of the registration of any design.

PART III – COPYRIGHT IN REGISTERED DESIGNS

Duration of copyright in registered designs

87. (1) When a design is registered, the registered proprietor of the design shall, save as is provided in section *seventy-eight*, have copyright in the design during five years from the date of registration.

(2) If, before the expiration of the said five years or within such further time (not exceeding three months) as the registrar may allow, application for the extension of the period or copyright is made in the prescribed manner to the registrar he shall, on payment of the prescribed fee, extend the period of copyright for a second term of five years from the expiration of the original period.

[subsection (2) substituted by Act 19 of 1947]

(3) If, before the expiration of such second term or within such further time (not exceeding three months) as the registrar may allow, application for further extension is made in the prescribed manner to the registrar he may, subject to any rules under this Act and on payment of the prescribed fee, extend the period of copyright for a third term of five years from the expiration of the second term.

[subsection (3) substituted by Act 19 of 1947]

Assignment and dealing with registered design by proprietor thereof

88. (1) The person registered as the proprietor of a design shall, subject to the provisions of this Chapter and to any rights appearing from the register to be vested in any other person, have power to assign, grant licences as to, or otherwise deal with, the design.

(2) The provisions of sub-section (1) shall not protect any person dealing with the registered proprietor other than as a *bona fide* purchaser for value and without notice of any fraud on the part of the registered proprietor.

Duties of proprietor before delivery on sale of articles to which registered design has been applied

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

- (a) (if exact representations or specimens were not furnished on the application for registration) furnish to the registrar the prescribed number of exact representations or specimens of the design; and if he fails to do so, the registrar may erase his name from the register, and thereupon the copyright in the design shall cease; and
- (b) cause each such article to be marked with the prescribed mark, or with the prescribed mark or figures, denoting that the design is registered; and if he fails to do so, the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design, unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.

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

PART IV – LEGAL PROCEEDINGS

Protection of design during copyright

93. (1) During the existence of copyright in any design, it shall not be lawful for any person -

- (a) for the purposes of sale to apply or cause to be applied to any article, in any class of goods in which the design is registered, the design, or any fraudulent or obvious imitation thereof, except with the licence or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or
- (b) knowing that the design, or any fraudulent or obvious imitation thereof, has been applied to any article without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.

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

the total sum recoverable as a liquidated debt, in respect of any one design shall not exceed one hundred pounds.

[A sum not exceeding fifty pounds is equivalent to a sum not exceeding N\$100;
a sum not exceeding one hundred pounds is equivalent to a sum not exceeding N\$200.]

Application of remedies under Chapter I. in the case of registered designs

94. The provisions of Chapter I. with regard to certificates of the validity of a patent, and to the remedy in the case of groundless threats of legal proceedings by a patentee, shall apply in the case of registered designs, in like manner as they apply in the case of patents, with the substitution of references to the copyright in a design for references to a patent, and of references to the proprietor of a design for references to the patentee, and of references to the design for references to the invention.

CHAPTER V

GENERAL AND SUPPLEMENTARY PROVISIONS

C. Supplemental

Short title

195. This Act may be cited for all purposes as the Patents, Designs, Trade Marks, and Copyright Act, 1916.