

and after the day on which the certificate of registration is issued.

(2) In the case of a design registered in respect of an article of any class prescribed for the purposes of this subsection, no representation or specimen of the design filed in pursuance of the application shall, until the expiration of such period after the day on which the certificate of registration is issued as may be prescribed in relation to articles of that class, be open to inspection at the Patent Office except by the registered proprietor, a person authorised in writing by the registered proprietor, or a person authorised by the Commissioner or by the Court:

Provided that where the Commissioner proposes to refuse an application for the registration of any other design on the ground that it is the same as or differs only in immaterial details or in features which are variants commonly used in the trade, the applicant shall be entitled to inspect the representation or specimen of the first-mentioned design filed in pursuance of the application for registration of that design.

(3) In the case of a design registered in respect of an article of any class prescribed for the purposes of subsection (2) of this section, the representation or specimen of the design shall not, during the period prescribed as aforesaid, be inspected by any person by virtue of this section except in the presence of the Commissioner or of a member of his staff acting under him; and, except in the case of an inspection authorised by the proviso to that subsection, the person making the inspection shall not be entitled to take a copy of the representation or specimen of the design or any part thereof.

(4) Where an application for the registration of a design has been abandoned or refused, neither the application for registration nor any representation or specimen of the design filed in pursuance thereof shall at any time be open to inspection at the Patent Office or be published by the Commissioner.

Cf. Registered Designs Act 1949, s. 22 (U.K.); 1921–22, No. 18, ss. 59, 120

**31. Information as to existence of copyright**—On the request of any person furnishing such information as may enable the Commissioner to identify the design, and on payment of the prescribed fee, the Commissioner shall inform him whether the design is registered, and, if so, in respect of what articles, and whether any extension of the period of copyright has been granted, and shall state the date of

registration and the name and address of the registered proprietor.

Cf. Registered Designs Act 1949, s. 23 (U.K.); 1921–22, No. 18, s. 60

**32. Evidence of entries, documents, etc.—**(1) A certificate purporting to be signed by the Commissioner and certifying that any entry which he is authorised by or under this Act to make has or has not been made, or that any other thing which he is so authorised to do has or has not been done, shall be prima facie evidence of the matters so certified.

(2) A copy of any entry in the register of designs or of any representation, specimen, or document kept in the Patent Office or an extract from the register or any such document, purporting to be certified by the Commissioner and to be sealed with the seal of the Patent Office, shall be admitted in evidence without further proof and without production of the original.

Cf. Registered Designs Act 1949, s. 24 (U.K.); 1921–22, No. 18, ss. 130, 131

*Legal Proceedings and Appeals*

**33. Certificate of contested validity of registration—**(1) If in any proceedings before the Court the validity of the registration of a design is contested, and it is found by the Court that the design is validly registered, the Court may certify that the validity of the registration of the design was contested in those proceedings.

(2) Where any such certificate has been granted, then, if in any subsequent proceedings before the Court for infringement of the copyright in the registered design or for cancellation of the registration of the design a final order or judgment is made or given in favour of the registered proprietor, he shall, unless the Court otherwise directs, be entitled to his costs as between solicitor and client:

Provided that this subsection shall not apply to the costs of any appeal in any such proceedings as aforesaid.

Cf. Registered Designs Act 1949, s. 25 (U.K.); 1921–22, No. 18, s. 40

**34. Remedy for groundless threats of infringement proceedings—**(1) Where any person (whether entitled to or interested in a registered design or an application for registration of a design or not) by circulars, advertisements,

or otherwise threatens any other person with proceedings for infringement of the copyright in a registered design, any person aggrieved thereby may bring an action against him for any such relief as is mentioned in subsection (2) of this section.

(2) Unless in any action brought by virtue of this section the defendant proves that the acts in respect of which proceedings were threatened constitute or, if done, would constitute an infringement of the copyright in a registered design the registration of which is not shown by the plaintiff to be invalid, the plaintiff shall be entitled to the following relief, that is to say:

- (a) A declaration to the effect that the threats are unjustifiable; and
- (b) An injunction against the continuance of the threats; and
- (c) Such damages, if any, as he has sustained thereby.

(3) For the avoidance of doubt it is hereby declared that a mere notification that a design is registered does not constitute a threat of proceedings within the meaning of this section.

Cf. Registered Designs Act 1949, s. 26 (U.K.); 1921–22, No. 65

**35. Appeal to High Court**—(1) Every appeal under this Act against a decision of the Commissioner shall be to the [High Court].

(2) Notice of every such appeal shall be filed in the Court and served upon the Commissioner within 28 days after the day on which the decision appealed against was given.

(3) In any such appeal the Court shall have and may exercise the same discretionary powers as are conferred upon the Commissioner.

(4) Except with the leave of the [High Court] or of the Court of Appeal, no appeal shall lie from any decision of the [High Court] on an appeal against a decision of the Commissioner.

Cf. 1921–22, No. 18, s. 140

#### *Powers and Duties of Commissioner*

**36. Exercise of discretionary powers of Commissioner**—Without prejudice to any provisions of this Act requiring the Commissioner to hear any party to proceedings thereunder, or to give to any such party an opportunity to be

heard, the Commissioner shall give to any applicant for registration of a design an opportunity to be heard before exercising adversely to the applicant any discretion vested in the Commissioner by or under this Act.

Cf. Registered Designs Act 1949, s. 29 (U.K.); 1921–22, No. 18, s. 124

**37. Commissioner may grant extension of time—**

(1) Where by this Act anything is required to be done within a prescribed time, and by reason of delay in the Patent Office the thing is not so done, the Commissioner may extend the time for the doing of the thing.

(2) No fees shall be payable in respect of any extension of time granted under this section.

(3) The powers conferred on the Commissioner by this section may be exercised notwithstanding that in any case the time limited may have expired.

Cf. 1921–22, No. 18, s. 125

**[37A. Additional provisions for extending time limits—**(1) The Commissioner may extend the time prescribed in subsection (1) of section 21 of this Act for the filing of an application under that section on such terms (if any) as he thinks fit where he is satisfied that the circumstances warrant the extension.

(2) Notwithstanding subsection (1) of this section, the Commissioner shall refuse to grant an extension of time under that subsection if in his opinion—

- (a) The applicant or his agent has not allowed a reasonable margin of time for the delivery to the Patent Office, by post or otherwise, of any documents relating to the matter in respect of which the application for the extension of time is made; or
- (b) The applicant or his agent has in any other way failed to act with due diligence and prudence in respect of such matter; or
- (c) There has been undue delay in bringing the application for the extension of time or in prosecuting the application.

(3) Every extension of time granted under this section shall be advertised in the *Journal* in the prescribed manner.

(4) Where an application is made for an extension of time under this section by an agent on behalf of any applicant, the Commissioner may as a condition of granting the application

require that written confirmation that the application is authorised shall be signed or executed by the applicant and lodged with the Commissioner within such time as the Commissioner specifies.

(5) Any extension of time under this section, and any requirement given or other action taken by the Commissioner under this section, may be granted, given, or taken so as to have effect in respect of things done or omitted to be done before the commencement of this section, as long as the application for the extension of time has been made before registration of the design in respect of which the application under this section has been made.

(6) The Governor-General may, from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) For the protection of persons who at any time in good faith have begun to avail themselves of any design that is the subject-matter of a matter in respect of which any application under this section is made:
- (b) Prescribing the evidence that the Commissioner may accept in support of applications under this section:
- (c) Prescribing the manner of advertising in the *Journal* extensions of time granted under this section:
- (d) Prescribing the grounds of opposition to applications under this section:
- (e) Regulating the procedure to be followed in relation to applications under this section and opposition to such applications:
- (f) Prescribing the fees to be paid in respect of applications under this section.]

This section was inserted by s. 3 of the Designs Amendment Act 1972.

**38. Costs and security for costs—**(1) The Commissioner may, in any proceedings before him under this Act, by order award to any party such costs as he may consider reasonable, and direct how and by what parties they are to be paid; and any such order may be entered as a judgment of the Court and, with the leave of the Court, may be enforced accordingly.

(2) If any party by whom application is made to the Commissioner for the cancellation of the registration of a design or for the grant of a licence in respect of a registered design, or by whom notice of appeal is given from any decision of the Commissioner under this Act, neither resides nor carries on business in New Zealand, the Commissioner,