
**Council for Trade-Related Aspects of
Intellectual Property Rights**

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**MAIN DEDICATED INTELLECTUAL PROPERTY
LAWS AND REGULATIONS NOTIFIED UNDER
ARTICLE 63.2 OF THE AGREEMENT**

SURINAME

The present document reproduces the text¹ of the Draft Industrial Property Act, as notified by Suriname under Article 63.2 of the Agreement (see document IP/N/1/SUR/1).

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

**PRINCIPALES LOIS ET RÉGLEMENTATIONS CONSACRÉES À LA
PROPRIÉTÉ INTELLECTUELLE NOTIFIÉES AU TITRE
DE L'ARTICLE 63:2 DE L'ACCORD**

SURINAME

Le présent document contient le texte¹ du projet de loi sur la propriété industrielle, notifié par Suriname au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/SUR/1).

**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA
PROPIEDAD INTELLECTUAL NOTIFICADOS EN VIRTUD
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

SURINAME

En el presente documento se reproduce el texto¹ del proyecto de Ley de Propiedad Industrial, notificado por Suriname en virtud del párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/SUR/1).

¹ In English only./En anglais seulement./En inglés solamente.

DRAFT INDUSTRIAL PROPERTY ACT FOR SURINAME

prepared by the International Bureau of WIPO

DRAFT INDUSTRIAL PROPERTY ACT FOR SURINAME

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PART I: PATENTS

Definitions of "Patent"
and of "Invention";
Matter Excluded from
Patent Protection

1.(1) For the purposes of this Act, "patent" means the title granted to protect an invention.

(2)(a) For the purposes of this Act, "invention" means an idea of an inventor which permits in practice the solution to a specific problem in the field of technology.

(b) An invention may be, or may relate to, a product or a process.

(3) The following, even if they are inventions within the meaning of subsection (2), shall be excluded from patent protection:

- (i) discoveries, scientific theories and mathematical methods;
- (ii) schemes, rules or methods for doing business, performing purely mental acts or playing games;
- (iii) 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 those methods.

Patentable Inventions

2.(1) An invention is patentable if it is new, involves an inventive step and is industrially applicable.

(2)(a) An invention is new if it is not anticipated by prior art.

(b) Prior art shall consist 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.

(c) For the purposes of paragraph (b), disclosure to the public of the invention 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 acts committed by the applicant or his predecessor in title or of an abuse committed by a third party with regard to the applicant or his predecessor in title.

(3) An invention shall be considered as involving an inventive step if, having regard to the prior art relevant to the application claiming the invention and as defined in subsection (2)(b), it would not have been obvious to a person having ordinary skill in the art.

(4) An invention shall be considered industrially applicable if it can be made or used in any kind of industry. "Industry" shall be understood in its broadest sense; it shall cover, in particular, handicraft, agriculture, fishery and services.

(5) Inventions the commercial exploitation of which would be contrary to public order or morality shall not be patentable.

Right to Patent;
Naming of Inventor

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

(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, as long as the said application is not withdrawn, abandoned or rejected.

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

(5) 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.

(6) 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. 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.

Application

4.(1) The application for a patent shall be filed with the Registrar and shall contain a request, a description, one or more claims, one or more drawings (where required), and an abstract. It shall be subject to the payment of the prescribed application fee.

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

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

(3) 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.

(4)(a) The claim or claims shall define the matter for which protection is sought. The description and the drawings may be used to interpret the claims.

(b) Claims shall be clear and concise. They shall be fully supported by the description.

(5) Drawings shall be required when they are necessary for the understanding of the invention.

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

(7) 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; Amendment
and Division of Application

5.(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 applicant may, up to the time when the application is in order for grant, amend the application, provided that the amendment shall not go beyond the disclosure in the initial application.

(3)(a) The applicant may, up to the time when the application is in order for grant, divide the application into two or more applications ("divisional applications"), provided that each divisional application shall not go beyond the disclosure in the initial application.

(b) Each divisional application shall be entitled to the filing date and, where applicable, the priority date of the initial application.

(4) 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.

Right of Priority

6.(1) The 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 said Convention [or any Member of the World Trade Organization].

(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 Office with which it was filed.

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

(4) If the Registrar finds that the requirements under this Section and the Regulations pertaining thereto have not been fulfilled, the said declaration shall be considered not to have been made.

Information Concerning
Corresponding Foreign
Applications and Patents

7.(1) The applicant shall, at the request of the Registrar, furnish him with the date and number of any application for a patent filed by him abroad ("foreign application") relating to the same or essentially the same invention as that claimed in the application filed with the Office of the Registrar.

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

- (i) a copy of any communication received by the applicant concerning the results of any search or examination carried out in respect of the foreign application;
- (ii) a copy of the patent granted on the basis of the foreign application;
- (iii) a copy of any final decision rejecting the foreign application or refusing the grant requested in the foreign application.

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

(3) Subsection (2) (i) and (iii) shall not apply where the Office of the Registrar is an elected Office in the meaning of Section 15(ii) and has received or will receive an international preliminary examination report.

Filing Date;
Examination

8.(1)(a) The Registrar shall accord as the filing date the date of receipt of the application, provided that, at the time of receipt, the application contains:

- (i) an express or implicit indication that the granting of a patent is sought;
- (ii) indications allowing the identity of the applicant to be established;
- (iii) a part which, on the face of it, appears to be a description of an invention.

(b) If the Registrar finds that the application did not, at the time of receipt, fulfill the requirements referred to in paragraph (a), he 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 treated as if it had not been filed.

(2) Where the application refers to drawings which in fact are not included in the application, the Registrar shall invite the applicant to furnish the missing drawings. 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 reference to the said drawings as non-existent.

(3) After according a filing date, the Registrar shall examine whether the application complies with the requirements of Section 4(1) and (2) and the Regulations pertaining thereto and those requirements of this Act and the Regulations which are designated by the Regulations as formal requirements for the purposes of this Act and whether information requested under Section 7, if any, has been provided.

[(4) Where the Registrar is of the opinion that the application complies with the requirements indicated in subsection (3), the Registrar shall, as provided for in the Regulations, cause the application to be examined as to whether the requirements of Sections 1(2) and (3), 2, 4(3), (4) and (5) and 5 and the Regulations pertaining thereto are fulfilled.]

[(5) The Registrar shall take into account, for the purposes of examination under subsection (4),

- (i) the results of an international search and preliminary examination report established in accordance with the provisions of Chapter X of the PCT; and/or
- (ii) a search and examination report submitted under Section 7(2)(i) relating to, or a final decision submitted under Section 7(2)(iii) on the refusal to grant a patent on, a corresponding foreign application; and/or
- (iii) a search and examination report which was carried out upon his request by an external search and examination authority.]

Grant of Patent;
Changes in Patents

9.(1) Where the Registrar finds that the conditions referred to in Section 8(3) [and (4)] are fulfilled, he shall grant the patent. Otherwise, he shall refuse the application and notify the applicant of that decision.

(2) When he grants a patent, the Registrar shall:

- (i) publish a reference to the grant of the patent;
- (ii) issue to the applicant a certificate of the grant of the patent and a copy of the patent;
- (iii) record the patent;

- (iv) make available copies of the patent to the public, on payment of the prescribed fee.

[(3) The Registrar shall, whenever possible, reach a final decision on the application not later than two years after the commencement of the examination referred to in Section 8(4).]

(4) 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 thereby, provided that the change would 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.

Rights Conferred by
Patent

10.(1) The exploitation of the patented invention in Suriname by persons other than the owner of the patent shall require the latter's agreement.

(2) For the purposes of this Act, "exploitation" of a patented invention means any of the following acts:

(a) when 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;

(b) when the patent has been granted in respect of a process:

- (i) using the process;
- (ii) doing any of the acts referred to in paragraph (a) in respect of a product obtained directly by means of the process.

(3) The owner of the patent shall, in addition to any other rights, remedies or actions available to him, have the right, subject to subsection (4) hereof and Section 12, to institute court proceedings against any person who infringes the patent 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.

(4)(a) The rights under the patent shall not extend:

- (i) to acts in respect of articles which have been put on the market in Suriname by the owner of the patent or with his consent; or
- (ii) 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 Suriname; or
- (iii) to acts done only for experimental purposes relating to a patented invention; or
- (iv) 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 and in Suriname, was using the invention or was making effective and serious preparations for such use.

(b) The right of prior user referred to in paragraph (a)(iv) may be transferred or devolve 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.

Duration;
Annual Fees

11.(1) Subject to subsection (2), a patent shall expire 20 years after the filing date of the application for the patent.

(2) 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. A period of grace of six months shall be allowed for the late payment of the annual fee on payment of the prescribed surcharge. If an annual fee is not paid in accordance with the provisions of this subsection, the patent application shall be deemed to have been withdrawn or the patent shall lapse.

Exploitation by Government
or Person thereby Authorized

12.(1) Where

- (i) the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy so requires, or
- (ii) the [name of the competent judicial or administrative body to be inserted] 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, even 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 authorized and shall be subject to the payment to the said owner of an adequate remuneration therefor, taking into account the economic value of the Minister's authorization, as determined in the said decision, and, where a decision has been taken under paragraph (ii) of subsection (1), the need to correct anti-competitive practices. The Minister shall take his decision after hearing the owner of the patent and any interested person if they wish to be heard.

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

(b) Paragraph (a) of this subsection shall not apply in cases of

[(i) national emergency or other circumstances of extreme urgency provided, however, that in such cases the owner of the patent shall be notified of the Minister's decision as soon as reasonably practicable [,

(ii) public non-commercial use, and

(iii) anti-competitive practices determined as such by a judicial or administrative body in accordance with subsection (1)(ii)].

(4) The exploitation of a patented invention in the field of semi-conductor technology shall only be authorized either for public non-commercial use or where a judicial or administrative body has determined 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 license would remedy such practice.

(5) The authorization shall not exclude:

- (i) the conclusion of license contracts by the owner of the patent; or
- (ii) the continued exercise, by the owner of the patent, of his rights under Section 10(2); or
- (iii) the issuance of a non-voluntary license under Section 13.

(6) Where a third person has been designated by the Minister, the authorization 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.

The Minister may terminate the authorization under *paragraph (a)* in the following cases, for example: (i) where a Government agency or third person designated by the Minister has, within the time limit, if any, fixed in the Minister's decision, neither begun the exploitation of the patented invention in Suriname nor made serious preparations toward such exploitation; (ii) where the beneficiary of the authorization has gone beyond the scope of the authorization as fixed in the Minister's decision; or (iii) where the beneficiary of the authorization is in arrears in respect of the payment due, according to the Minister's decision.

In these cases, cancellation is a sanction imposed on the beneficiary of the authorization for the failure to comply with his obligations as set out in the Minister's decision. An example of a reason that could result in the termination of the authorization because of changed circumstances would be that it is no longer in the public interest that the patent should be exploited because another product with the same or similar features has been developed and put on the market in sufficient quantities in the meantime. However, the authorization will not be terminated in any case if circumstances exist justifying its maintenance (*paragraph (b)*), as account has to be taken of the investments and preparations made by the beneficiary, which would be completely wasted if the authorization were terminated. The beneficiary's interest in the maintenance of the authorization would, however, only be considered to be legitimate if the change in the circumstances which gave rise to the request was not caused by the beneficiary.

(7) [The exploitation of the invention by the Government agency or third person designated by the Minister shall be predominantly for the supply of the market in Suriname].

Alternative:

(7) [Where the exploitation of the invention by the Government agency or third person designated by the Minister is authorized under subsection (1)(i), it shall be predominantly for the supply of the market in Suriname.]

(8) Upon request of the owner of the patent, of the Government agency or of the third person authorized 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 authorizing the exploitation of the patented invention to the extent that changed circumstances justify such variation.

(9)(a) Upon the request of the owner of the patent, the Minister shall terminate the authorization 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

(b) Notwithstanding paragraph (a), the Minister shall not terminate the authorization 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.

Section 13:

Under this Section, the Registrar or the Court, if a judicial procedure is preferred, may issue non-voluntary licenses in the case of non-exploitation (by local working or importation) of the patented invention and for the exploitation of dependent patents. As stated in the Commentary on Section 12, above, the Registrar or the Court could also be entrusted with the grant of non-voluntary licenses on the grounds referred to in Section 12(1)(i) and (ii). There would then, it is suggested, be no need for allowing additional requests for an authorization by the Minister to exploit the patented invention on the said grounds.

(10) The decisions of the Minister under subsections (1) to (9) may be the subject of an appeal before the [...] Court.

Non-Voluntary Licenses

13(1)(a) On request, made to the [Registrar] [Court] after the expiration of a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent, whichever period expires last, the [Registrar] [Court] may issue a non-voluntary license if [he] [it] is satisfied that the patented invention is not exploited or is insufficiently exploited, by working the invention locally or by importation, in Suriname.

(b) Notwithstanding paragraph (a) of this subsection, a non-voluntary license shall not be issued if the owner of the patent satisfies the [Registrar] [Court] that circumstances exist which justify the non-exploitation or insufficient exploitation of the patented invention in Suriname.

(2) The decision issuing the non-voluntary license shall fix

(i) the scope and function of the license,

(ii) the time limit within which the licensee must begin to exploit the patented invention, and

(iii) the amount of the adequate remuneration to be paid to the owner of the patent and the conditions of payment.

(3) The beneficiary of the non-voluntary license shall have the right to exploit the patented invention in Suriname according to the terms set out in the decision issuing the license, shall commence the exploitation of the patented invention within the time limit fixed in the said decision and, thereafter, shall exploit the patented invention sufficiently.

Where the issuance of a non-voluntary license or the variation of its terms or its termination is requested, *subsection (9)* provides that subsections (2) to (10) of Section 12 shall apply *mutatis mutandis*. This means, in particular, that references to the Minister's authorization would have to be read as references to the non-voluntary license issued or requested to be issued by the Registrar.

(4) If the invention claimed in a patent ("later patent") cannot be exploited in the country without infringing a patent granted on the basis of an application benefiting from an earlier filing or, where appropriate, priority date ("earlier patent"), and provided that 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 [Registrar] [Court], upon the request of the owner of the later patent, may issue a non-voluntary license to the extent necessary to avoid infringement of the earlier patent.

(5) Where a non-voluntary license is issued under subsection (4), the [Registrar] [Court], upon the request of the owner of the earlier patent, shall issue a non-voluntary license in respect of the later patent.

(6) In the case of a request for the issuance of a non-voluntary license under subsections (3) and (4), subsection (2) shall apply *mutatis mutandis* with the proviso that no time limit needs to be fixed.

(7) In the case of a non-voluntary license issued under subsection (3), the transfer may be made only with the later patent, or, in the case of a non-voluntary license issued under subsection (4), only with the earlier patent.

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

(9) Section 12(2) to (10) shall apply *mutatis mutandis*.

Section 14

It is essential, in any law on inventions, to provide for the possibility of invalidating patents not satisfying specific fundamental requirements of the law. Such a possibility should be provided for, in particular, if a country does not adopt the system in which patent applications are substantively examined.

This Section provides for a judicial procedure for the invalidation of the patent since it is preferable to entrust this delicate task to an authority independent of the one that granted the patent.

The request to the court to invalidate a patent may be made in proceedings instituted for that purpose or as a counterclaim in a defense to an infringement suit initiated by the owner of the patent.

Invalidation

14.(1) Any interested person may request the court to invalidate a patent.

(2) The court shall invalidate the patent if the person requesting the invalidation proves that any of the requirements of Sections 1(2) and (3), 2 and 4(3), (4) and (5) is not fulfilled or if the owner of the patent is not the inventor or his successor in title.

(3) Any invalidated patent, or claim or part of a claim, shall be regarded as null and void from the date of the grant of the patent.

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

PART II

INTERNATIONAL APPLICATIONS UNDER THE PATENT COOPERATION TREATY

Part II contains provisions for implementing the Patent Cooperation Treaty in the Industrial Property Act of Suriname, in particular for the processing by the Office of the Registrar of Suriname, of international applications filed under that Treaty, including processing in both the international phase and the national phase.

The provisions proposed for inclusion in the Act itself relate to the most important obligations and functions of Suriname under the Treaty and to the most important requirements which must be complied with in relation to international applications. The general terms in which Sections 16, 17, 19 and 20 are expressed give the Office of the Registrar the necessary authority to carry out all of the functions of a receiving Office, designated Office and elected Office which are envisaged by the Treaty. Having established the main principles in the Industrial Property Act itself, other matters may be dealt with, pursuant to Section 24, in the Regulations under the Industrial Property Act. Certain provisions suggested for inclusion in the Regulations are included in this Commentary.

In view of the fact that there may be some matters where the provisions of the Industrial Property Act are in conflict with those of the Treaty in connection with the processing of international applications and that such possible conflicts may not always be recognized, or may not be important

enough or frequent enough to warrant the inclusion of specific provisions when the implementing provisions are finalized, general provisions are included in Section 24 to ensure that the provisions of the Treaty will always apply to the processing of international applications, and to enable such conflicts to be resolved in the Regulations under the Industrial Property Act.

Section 15

This Section provides definitions of "Patent Cooperation Treaty" and of certain expressions used in the Part, those expressions being defined to have the same meanings as in the Treaty itself (see particularly the definitions in Article 2 of the Treaty).

Section 16

This Section enacts the fundamental obligation of Article 11(3) of the Treaty. Thus, an international application designating Suriname (which may be filed with any receiving Office under the Treaty) has the effect of a regular national application in Suriname as of the international filing date accorded under the Treaty, which date shall be considered to be the actual filing date in Suriname.

PART II

INTERNATIONAL APPLICATIONS UNDER THE PATENT COOPERATION TREATY

Interpretation of Terms
Concerning the PCT

15. For the purposes of this Act:

- (i) "Patent Cooperation Treaty" means the Patent Cooperation Treaty done at Washington on June 19, 1970;
- (ii) "designate," "designated Office," "elect," "elected Office," "international application," "international filing date," "international preliminary examination" and "receiving Office" have the same meanings as in the Patent Cooperation Treaty.

Filing Date and
Effects of International
Application Designating
Suriname

16. An international application designating Suriname 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.

Section 17

Section 18

This Section provides that an international application filed with the Office of the Registrar as receiving Office shall be filed in the prescribed language or one of the prescribed languages. This Section also subjects the filing of an international application with the Office of the Registrar to the payment of a transmittal fee to be prescribed in the Regulations under the Industrial Property Act.

It should be noted that, under Rule 12.1(a) of the Regulations under the Treaty, the Office of the Registrar as receiving Office may accept any language for the filing of international applications; however, under Rule 12.3(b) of the Regulations under the Treaty, the Office of the Registrar as receiving Office must accept at least one language which is both a language accepted by the International Searching Authority or, if applicable, by at least one of the International Searching Authorities, competent for the international searching of international applications filed with the Office of the Registrar as receiving Office, and a language of publication. It should be further noted that, under Rule 12.3 of the Regulations under the Treaty, where the international application is filed in a language that is accepted by the Office of the Registrar as receiving Office but not by the International Searching Authority that is to carry out the international search, the applicant has to furnish to the Office of the Registrar as receiving Office a translation of the international application into a language into a language prescribed by Rule 12.3(a) of the Regulations under the Treaty.

Office of the Registrar
as Receiving Office

17.(1) The Office of the Registrar shall, unless an agreement is in force under subsection (2), act as a receiving Office in respect of any international application filed with it by a resident or national of Suriname.

(2) [With the consent of the Minister, the] [The] Office of the Registrar may make an agreement of the kind referred to in Rule 19.1(b) of the Regulations under the Patent Cooperation Treaty whereby [an intergovernmental organization or the national Office of another Contracting State of the Patent Cooperation Treaty] shall act instead of the Office of the Registrar as receiving Office for applicants who are residents or nationals of Suriname.

Filing of International
Applications with the
Office of the Registrar

18. An international application filed with the Office of the Registrar as receiving Office shall be filed in the prescribed language and the prescribed transmittal fee shall be paid to the Office of the Registrar.

Section 19

This Section provides that the Office of the Registrar is to undertake the functions of a designated Office in relation to an international application in which Suriname is designated for the purposes of obtaining a national patent under the Industrial Property Act. Should Suriname become a member of the Harare Protocol, then the possibility of designating Suriname for the purposes of obtaining a regional patent would be governed, pursuant to Article 45(1) of the Patent Cooperation Treaty, by the regional patent treaty.

The international phase of the PCT procedure includes receipt and checking of the international application and according of an international filing date by the receiving Office, international search by an International Searching Authority and international publication by the International Bureau of WIPO. By the end of the international phase, the applicant must, if the international application is to proceed as an application under the Industrial Property Act of Suriname, enter the national phase of processing within the applicable time limit by paying the prescribed fee and, if necessary, filing a translation (see Section 22). The Office of the Registrar will then commence processing of the international application in its capacity as a designated Office in the

national phase of processing. The Office of the Registrar will have, for this purpose, the published pamphlet, prepared by the International Bureau, containing the international application and the international search report prepared by the International Searching Authority.

Section 20

This Section provides that the Office of the Registrar is to carry out the functions of an elected Office in respect of an international application if the applicant files a demand for international preliminary examination under Chapter II of the Treaty and elects Suriname as a State in which he intends to use the results of that examination. Suriname may only be elected if it is designated in the international application (see Section 19). Where a demand for international preliminary examination is filed, the international application is sent to an International Preliminary Examining Authority, which establishes an international preliminary examination report giving a non-binding opinion on the novelty, inventive step and industrial applicability of the invention as claimed in the international application. A copy of that report is sent to the Office of the Registrar in its capacity as an elected Office. Provided that the applicant enters the national phase of processing by paying the prescribed fee and, if necessary, filing a translation (see Section 22), national processing will then be undertaken by the Office of the Registrar as an elected Office.

Different time limits for entering the national phase apply depending on whether or not Suriname is elected before the expiration of 19 months from the priority date of the international application (see Section 22 and Articles 22 and 39 of the Treaty).

Section 21

This Section gives effect to Articles 23 and 40 of the Treaty, which Articles require designated and elected Offices not to commence national processing of an international application until the expiration of the applicable time limit under Article 22 or 39 of the Treaty (see Section 22), except on express request by the applicant.

Office of the Registrar
as Designated Office

19. The Office of the Registrar shall act as a designated Office in respect of an international application in which Suriname is designated for the purposes of obtaining a national patent under this Act.

Office of the Registrar
as Elected Office

20. The Office of the Registrar shall act as an elected Office in respect of an international application in which Suriname is designated as referred to in Section 19 if the applicant elects Suriname for the purposes of international preliminary examination under Chapter II of the Patent Cooperation Treaty.

National Processing

21. The Office of the Registrar as designated Office or elected Office shall not commence processing of an international application designating Suriname before the expiration of the time limit referred to in Section 22 except if the applicant complies with the requirements of that Section and files with the Office of the Registrar an express request for early commencement of such processing.

Section 22

This Section sets out the steps which must be undertaken by an applicant, in accordance with Articles 22 and 39 of the Treaty, in order to enter the national phase of processing before the Office of the Registrar of an international application designating Suriname. Those steps are payment of the prescribed fee and, if necessary, the filing of a translation of the international application into English. The filing of a translation will be necessary if the international application itself was not filed in, or has not been published under the Treaty as a translation into, English. An international application is published under the Treaty as a translation only in cases where the international application was filed in a language other than one of the languages of publication under the Treaty (see PCT Rule 48.3(a) of the Regulations under the Treaty), in which case the international application will be published as a translation into either one of the languages of publication (see PCT Rule 48.3(a) to (c) of the Regulations under the Treaty) or into English (see PCT Rule 48.3(b) of the Regulations under the Treaty).

The steps referred to in this Section must be taken within the time limit applicable under Article 22 or 39 of the Treaty (20 months from the priority date, or 30 months from the priority date in a case where Suriname was elected for the purposes of international preliminary examination under Chapter II of the Treaty before the expiration of 19 months from the priority date), or within such later time limit as may be prescribed in the Regulations. Many Contracting States of the Treaty have prescribed later time limits for this purpose. It is suggested that the Regulations under the Industrial Property Act prescribe time limits of 21 and 31 months for Articles 22 and 39, respectively. Suitable Rules to be included in the Regulations as to the prescribed time limit, the prescribed language(s) and the prescribed contents of the translation would be as follows:

(..) Where Suriname was not, before the expiration of 19 months from the priority date referred to in Article 2(xi) of the Patent Cooperation Treaty, elected for the purposes of international preliminary examination:

(a) the time limit referred to in Section 22 of the Industrial Property Act shall be 21 months from that date;

(b) the translation of the international application referred to in that Section shall include a translation into English of:

- (i) the description;
- (ii) the claims (if amended under Article 19 of the Patent Cooperation Treaty, as so amended);
- (iii) any text matter of the drawings; and
- (iv) the abstract.

Entering
National Phase

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

- (i) pay the prescribed fee to the Office of the Registrar; and

- (ii) if the international application was not filed in, or has not been published under the Patent Cooperation Treaty as a translation into English, file with the Office of the Registrar a translation of the international application, containing the prescribed contents, into English.

(..) Where Suriname was, before the expiration of 19 months from the priority date referred to in Article 2(xi) of the Patent Cooperation Treaty, elected for the purposes of international preliminary examination:

(a) the time limit referred to in Section 22 of the Industrial Property Act shall be 31 months from that date;

(b) the translation of the international application referred to in that Section shall include a translation into English of:

- (i) the description (if amended by any amendments annexed to the international preliminary examination report, as so amended);
- (ii) the claims (if amended by any amendments annexed to that report, as so amended);
- (iii) any text matter of the drawings (if amended by any amendments annexed to that report, as so amended); and
- (iv) the abstract.

(..) Where the applicant fails to file a translation of an amendment referred to in Rule (..) or (..), the Office of the Registrar shall invite the applicant to furnish the missing translation within a time limit which shall be reasonable in the circumstances and shall be fixed in the invitation. If the missing translation is not furnished within that time limit, the amendment shall be disregarded for the purposes of the further processing of the international application by the Office of the Registrar.

Section 23

This Section provides for the international application to be considered withdrawn for the purposes of the Industrial Property Act if the applicant does not take the necessary steps set out in Section 22 in order to enter the national phase of processing.

Failure to Enter
National Phase

23. If the applicant does not comply with the requirements of Section 22 within the time limit referred to in that Section, the international application shall be considered withdrawn for the purposes of this Act.

Section 24

Processing
International
Applications

24.(1) The Office of the Registrar shall process international applications in accordance with the provisions of the Patent Cooperation

in Accordance
with Treaty

Treaty, the Regulations established thereunder and the Administrative Instructions under those Regulations and with the provisions of this Act and the Regulations thereunder. In the event of conflict, the provisions of the Patent Cooperation Treaty, the Regulations thereunder and the Administrative Instructions under those Regulations shall apply. The Regulations under this Act may provide for the processing of international applications in such a case.

(2) Further details concerning the processing of international applications by, and other functions of, the Office of the Registrar in connection with the Patent Cooperation Treaty, including fees payable, time limits and other requirements in relation to international applications, may be included in the Regulations.

PART III

INDUSTRIAL DESIGNS

PART III

INDUSTRIAL DESIGNS

Definition of
“Industrial Design”

25.(1) For the purposes of this Act, any composition of lines or colors or any three-dimensional form, whether or not associated with lines or colors, is deemed to be an industrial design, provided that such composition or form gives a special appearance to a product of industry or handicraft and can serve as a pattern for a product of industry or handicraft.

(2) The protection under this Act does not extend to anything in an industrial design which serves solely to obtain a technical result and to the extent that it leaves no freedom as regards arbitrary features of appearance.

Section 27

The provisions of this Act which apply to patents are made applicable, with due alterations, to industrial designs with regard to: the right to registration of an industrial design; industrial designs created jointly by two or more persons; the right to assign a registered industrial design; and the right of the creator of an industrial design to be named in the registration (see comments on *Section 3*, above).

Section 28

This Section deals with the requirements of an application for registration of an industrial design and is to be supplemented by the Implementing Regulations.

Registrable
Industrial Designs

26.(1) An industrial design is registrable if it is new.

(2) An industrial design shall be new if it has not been disclosed to the public, anywhere in the world, by publication in tangible form or by use or in any other way, prior to the filing date or, where applicable, the priority date of the application for registration. Section 2(2)(c) shall apply *mutatis mutandis*.

(3) Industrial designs that are contrary to public order or morality shall not be registrable.

Right to Registration
of Industrial Design;
Naming of Creator

27. Section 3 shall apply *mutatis mutandis*.

Application

28.(1) The application for registration of an industrial design shall be filed with the Registrar and shall contain a request, drawings, photographs or other adequate graphic representations of the article embodying the industrial design and an indication of the kind of products for which the industrial design is to be used. It may be accompanied by a specimen of the article embodying the industrial design, where the industrial design is two-dimensional. The application shall be subject to the payment of the prescribed application fee.

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

(3) Section 6 shall apply *mutatis mutandis*.

(4) 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.

(5) 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 12 months from the date of filing or, if priority is claimed, from the date of priority, of the application.

Section 29

This draft Act provides only for a formal, but not a substantive (in particular as regards novelty), examination of industrial design applications. A substantive examination would require a large collection of industrial designs published anywhere in the world and could not be exhaustive. A system providing only for formal examination is considered appropriate, since registered industrial designs may be subject to proceedings for their invalidation where appropriate.

The procedure is that industrial designs are registered after the positive result of a formal examination, an examination as regards the right of the applicant, where he is not the creator, to the registration of the industrial design and an examination for compliance with the definition of "industrial design" and with the requirements of public order and morality, without any opposition proceedings being entertained. Invalidation proceedings may be instituted under Section 31.

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

Examination;
Registration
and Publication
of Industrial Design

29.(1) The Registrar shall accord as the filing date the date of receipt of the application, provided that, at the time of receipt, the application contains indications allowing the identity of the applicant to be established and the required graphic representation of the article embodying the industrial design. Section 8(1)(b) shall apply *mutatis mutandis*.

(2) After according a filing date, the Registrar shall examine whether the application complies with the requirements of Section 28(1) and (2) and the Regulations pertaining thereto, whether the application fee has been paid and whether the industrial design complies with the requirements of Sections 25 and 26(3) [and the Regulations pertaining thereto].

(3) Where the Registrar finds that the conditions referred to in subsection (2) hereof are fulfilled, he shall register the industrial design, publish a reference to the registration and issue to the applicant a certificate of registration of the industrial design; otherwise, he shall refuse the application.

(4)(a) Notwithstanding subsection (3), where a request has been made under Section 28(5) for 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. In this case, the Registrar shall publish a mention of the deferment of the publication of the industrial design 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.

(b) At the expiry of the period of deferment, the Registrar shall publish the registered industrial design.

Section 30

The provisions of this Section, regarding the rights conferred by the registration of an industrial design, are similar, in all material respects, to those of *Section 10* concerning patents (see comments on *Section 10*, above).

The owner of the registered industrial design, by merely paying the fee prescribed (in the Implementing Regulations), can renew the registration for two further consecutive periods of five years each. As in the case of patents, and for the same reasons (see comments on *Section 11(2)*, above), the fees for the first and second renewals would increase progressively and a grace period is allowed for the late payment of the renewal fee.

(c) 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.

Rights Conferred by
Registration; Duration;
Renewal

30.(1) The exploitation of a registered industrial design in Suriname by persons other than the registered owner shall require the agreement of the latter.

(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) Section 10(4)(a)(i) shall apply *mutatis mutandis*.

(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 court 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) The registration of an industrial design shall be for a period of five years from the filing date of the application for registration. The registration may be renewed for two further consecutive periods of five years through the payment of the prescribed fee. A period of grace of six months shall be allowed for the late payment of the renewal fee on payment of the prescribed surcharge.

Section 31

The provisions in this Section are similar, in all material respects, to those relating to patents (see comments on *Section 14*, above) and establish the possibility of invalidating registered industrial designs which do not satisfy the specific fundamental requirements of the law.

Invalidation

31.(1) Any interested person may request the court to invalidate the registration of an industrial design.

(2) The court shall invalidate the registration if the person requesting the invalidation proves that any of the requirements of Sections 25 and 26 is not fulfilled or if the registered owner of the industrial design is not the creator or his successor in title.

(3) Section 14(3) and (4) shall apply *mutatis mutandis*.

PART IV

MARKS, COLLECTIVE MARKS, TRADE NAMES AND ACTS OF UNFAIR COMPETITION

Section 32

The definitions provided in *paragraphs (i) and (ii)* of this Section distinguish between three categories of marks: trademarks, service marks and collective marks.

A mark belonging to any of these categories is always a visible distinctive sign, serving to distinguish the goods or services of one or more enterprises from the goods or services of another enterprise. Within this function of distinguishing goods or services, marks of the three categories have different objectives.

The "trademark" is the classic mark, serving to distinguish the goods of one enterprise (or of several enterprises working under license from the owner of the mark) from the goods of other enterprises. The goods may be manufactured products or natural products; they may be produced or merely sold by the owner of the mark or may be distributed by him without charge, as in the case of wrappings or advertising material.

The "service mark" is the fruit of a more modern notion. This mark fulfills the same function of distinguishing but it distinguishes the services of an enterprise (or of licensed enterprises), and not the goods, from those of other enterprises. These services may be of almost any kind, e.g., publicity, transport, insurance, laundry, treatment of materials.

The "collective mark" serves also to distinguish goods or services. However, it does not distinguish the goods or services of an individual enterprise from those of other enterprises, but goods or services which are produced by different enterprises but have a common origin or other common characteristics. The registered owner of such a mark can be one of those enterprises but may also be a third party--generally a cooperative or an association of enterprises or a public institute--charged with controlling the use of the mark. A collective mark must be designated as such when an application is filed for its registration. The purpose of this is to distinguish collective marks from trademarks and service marks in order to process and register them accordingly.

It would be possible to provide for the protection of "certification marks" in addition to collective marks. In this context, it is understood that the collective mark is used by members of an association, or group or of an entity, whereas the certification mark is used by persons or entities other than the owner of the mark and guarantees a particular characteristic or quality of the goods or services for which it is used.

PART IV
MARKS, COLLECTIVE MARKS, TRADE NAMES
AND ACTS OF UNFAIR COMPETITION

Definition of "Mark,"
of "Collective Mark"
and of "Trade Name"

32. For the purposes of this Act:

- (i) "mark" means any visible sign capable of distinguishing the goods ("trademark") or services ("service mark") of an enterprise;
- (ii) "collective mark" means any visible sign designated as such in the application for registration and capable of distinguishing the origin or any other common characteristic, including the quality, of goods or services of different enterprises which use the sign under the control of the registered owner of the collective mark;
- (iii) "trade name" means the name or designation identifying and distinguishing an enterprise.

Section 33

Acquisition of the
Exclusive Right to a
Mark; Registrability

33.(1) The exclusive right to a mark, as conferred by this Act, shall be acquired by registration in accordance with the provisions thereof.

(2) A mark cannot be validly registered:

- (i) if it is incapable of distinguishing the goods or services of one enterprise from those of other enterprises;
- (ii) if it is contrary to public order or morality;
- (iii) if it is likely to mislead the public or trade circles, in particular as regards the geographical origin of the goods or services concerned or their nature or characteristics;
- (iv) if it is identical with, or is an imitation of or contains as an element, an armorial bearing, flag and other emblem, a name or abbreviation or initials of the name of, or official sign or hallmark adopted by, any State, intergovernmental organization or organization created by an international

convention, unless authorized by the competent authority of that State or organization;

- (v) if it is identical with, or confusingly similar to, or constitutes a translation of, a mark or trade name which is well known in Suriname for identical or similar goods or services of another enterprise, or if it is well-known and registered in Suriname for goods or services which are not identical or similar to those in respect of which registration is applied for, provided, in the latter case, that use of the mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the well-known mark and that the interests of the owner of the well-known mark are likely to be damaged by such use;

Section 34

This Section deals with the requirement of an application for registration of a mark and is to be supplemented by the Implementing Regulations. The international classification mentioned in *subsection (1)* is the classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks. This classification is applied in an ever-growing number of countries and ensures consistency of treatment in classification matters. The subsection envisages that an application may be made in respect of more than one class of goods or services subject, naturally, to a corresponding increase in the application fee. This system is in conformity with the modern trend and minimizes the work without any loss of fees.

As regards the right of priority, reference is made to the comments on Section 6, above.

- (vi) if it is identical with a mark belonging to a different proprietor and already on the Register, or with an earlier filing or priority date, in respect of the same goods or services or closely related goods or services, or if it so nearly resembles such a mark as to be likely to deceive or cause confusion.

Application for Registration

34.(1) The application for registration of a mark shall be filed with the Registrar and shall contain a request, a reproduction of the mark and a list of the goods or services for which registration of the mark is requested, listed under the applicable class or classes of the International Classification. It shall be subject to the payment of the prescribed application fee.

(2)(a) The application may contain a declaration claiming the priority, as provided for in the Paris

Convention, of an earlier national or regional application filed by the applicant or his predecessor in title [in or for any State party to the said Convention or any Member of the World Trade Organization], in which case, the Registrar may require that the applicant furnish, within the prescribed time limit, a copy of the earlier application, certified as correct by the Office with which it was filed.

(b) The effect of the said declaration shall be as provided in the Paris Convention; if the Registrar finds that the requirements under this subsection and the Regulations pertaining thereto have not been fulfilled, the said declaration shall be considered not to have been made.

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

Section 35

This Section provides for a procedure under which, after the positive result of an examination for compliance with the requirements of *Section 33(2) (i) to (v)*, applications are advertised under *subsection (2)(a)* so that interested persons may file opposition to the registration. Oppositions are decided upon by the Office of the Registrar, and the registration effected or refused as the case may be. The examination procedure set out in this Section is relatively simple since an examination of applications, for compliance with the requirements referred to above, can be easily performed. To give the Office of the Registrar the more onerous task of examining applications for compliance with the requirements of *Section 33(2)(vi)*, as well, would require the Office of the Registrar to carry out a search amongst its records of registered marks and, if conflicting marks are found, to notify the applicant of particulars of those marks as objections to the registration of the mark sought to be registered. Under the procedure set out in this Section, such objections can be raised by any interested person in opposition proceedings, under *subsection (2)(b)*, or, after registration, in invalidation proceedings under *Section 37*.

Examination;
Opposition;
Registration of Mark

35.(1)(a) The Registrar shall examine whether the application complies with the requirements of *Section 34(1)* and the Regulations pertaining thereto.

(b) The Registrar shall examine and determine whether the mark is a mark as defined in *Section 31(i)* and is registrable under *Section 33(2)(i) to (v)*.

(2)(a) Where the Registrar finds that the conditions referred to in subsection (1) hereof are fulfilled, he shall forthwith cause the application, as accepted, to be published in the prescribed manner.

(b) Any interested person may, within the prescribed period and in the prescribed manner, give notice to the Registrar of opposition to the registration of the mark on the grounds that one or more of the requirements of *Section 32(i)* and *33(2)* and the Regulations pertaining thereto are not fulfilled.

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

(d) If the applicant sends a counter-statement, the Registrar shall furnish a copy thereof to the person giving notice of opposition and, after hearing the parties, if either or both wish to be heard, and considering the merits of the case, shall decide whether the mark should be registered.

(e) After an application is published and until the registration of the mark, the applicant has the same privileges and rights as he would have if the mark had been registered; however, it shall be a valid defense to an action brought hereunder in respect of an act done after the application was published, if the defendant establishes that the mark could not validly have been registered at the time the act was done.

(3) Where the Registrar finds that the conditions referred to in subsection (1) are fulfilled, and either:

- (i) the registration of the mark has not been opposed within the prescribed time limit; or
- (ii) the registration of the mark has been opposed and the opposition has been decided in the applicant's favor,

he shall register the mark, publish a reference to the registration and issue to the applicant a certificate of registration. Otherwise, he shall refuse the application.

Section 36

Rights Conferred
by Registration;
Duration

36.(1) The use of a registered mark, in relation to any goods or services for which it has been registered, by any person other than the registered owner shall require the agreement of the latter.

(2) The registered owner of a mark shall, in addition to any other rights, remedies or actions available to him, have the right to institute court proceedings against any person who infringes the mark by using, without his agreement, the mark as aforesaid or who performs acts which make it likely that infringement will occur. The right shall extend to the use of a sign similar to the registered mark and use in relation to goods and services similar to those for which the

mark has been registered, where confusion may arise in the public.

(3) The rights conferred by registration of a mark shall not extend to acts in respect of articles which have been put on the market in Suriname by the registered owner or with his consent.

(4)(a) The registration of a mark shall be for a period of ten years from the filing date of the application for registration.

(b) The registration of a mark may, upon request, be renewed for consecutive periods of ten years, provided that the registered owner pays the prescribed renewal fee.

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

Invalidation;
Removal on Grounds
of Non-Use

37.(1)(a) Any interested person may request the Registrar to invalidate the registration of a mark.

(b) The Registrar shall invalidate the registration if the person requesting the invalidation proves that any of the requirements of Sections 32(i) and 33(2) is not fulfilled.

(c) Any invalidation of a registration of a mark shall be deemed to have been effective as of the date of registration, and it shall be recorded and a reference thereto published as soon as possible.

(2) Any interested person may request the Registrar to remove a mark from the Register, in respect of any of the goods or services in respect of which it is registered, on the ground that up to one month prior to filing the request the mark had, after its registration, not been used by the registered owner or a licensee during a continuous period of three years or longer, provided that a mark shall not be removed if it is shown that special circumstances prevented the use of the mark and that there was no intention not to use or to abandon the same in respect of those goods or services.

Collective Marks

38.(1) Subject to subsections (2) and (3), Sections 33 to 37 shall apply to collective marks, except that references therein to Section 31(i) shall be read as 32(ii).

(2)(a) An application for registration of a collective mark shall designate the mark as a collective mark and shall

be accompanied by a copy of the regulations governing the use of the collective mark.

(b) The registered owner of a collective mark shall notify the Registrar of any changes made in respect of the regulations referred to in paragraph (a).

(3) In addition to the grounds provided in Section 37(1), the Registrar shall invalidate the registration of a collective mark if the person requesting the invalidation proves that only the registered owner uses the mark, or that he uses or permits its use in contravention of the regulations referred to in subsection (2)(a) or that he uses or permits its use in a manner liable to deceive trade circles or the public as to the origin or any other common characteristics of the goods or services concerned.

Licensing of Marks and Collective Marks

39.(1) Any license contract concerning the registration of a mark, or an application therefor, shall provide for effective control by the licensor of the quality of the goods or services of the licensee in connection with which the mark is used. If the license contract does not provide for such quality control or if such quality control is not effectively carried out, the license contract shall not be valid.

(2) The registration of a collective mark, or an application therefor, may not be the subject of a license contract.

Trade Names

40.(1) A name or designation may not be used as a trade name if by its nature or the use to which it may be put, it is contrary to public order or morality and if, in particular, it is liable to deceive trade circles or the public as to the nature of the enterprise identified by that name.

Section 41

This Section contains a general and very important rule according to which any act of competition contrary to honest practices in industrial or commercial matters is unlawful. The courts will have to apply this rule to all acts of unfair competition, even if they are not specifically listed in *subsection (2)* (the list is not exhaustive). The courts will have to decide in each case brought before them whether, in any given circumstances, any act constitutes an act of unfair competition. In many countries, extensive case law has developed in this field and can be consulted with advantage by other countries.

Attention is drawn to the fact that Model Provisions on Protection Against Unfair Competition which also include provisions on the protection of trade secrets (undisclosed information) required under Article 39 of the TRIPS Agreement have been prepared by WIPO with the assistance of a team of consultants and published in 1996 (WIPO publication No. 832 E).

(2)(a) Notwithstanding any laws or regulations providing for any obligation to register trade names, such names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.

(b) In particular, any subsequent use of the trade name by a third party, whether as a trade name or a mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful.

Acts of Unfair
Competition

41.(1) Any act of competition contrary to honest practices in industrial or commercial matters shall be unlawful.

(2) The following acts, in particular, shall be deemed to constitute acts of unfair competition:

- (i) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities of a competitor;
- (ii) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities of a competitor;
- (iii) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity of the goods.

PART V

GENERAL PROVISIONS

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GENERAL PROVISIONS

Changes in Ownership;
License Contracts

42.(1) Any change in the ownership of a patent, the registration of an industrial design or the registration of a mark or collective mark, or in the ownership of an application therefor, shall be in writing and shall, at the request of any interested party, to the Registrar, be recorded and, except in the case of an application, published by the

Registrar. Such change shall have no effect against third parties until such recording is effected.

(2) Any change in the ownership of the registration of a collective mark, or in the ownership of an application therefor, shall require previous approval by the Minister.

(3) Any change in the ownership of a trade name must be made with the transfer of the enterprise or part thereof identified by that name and shall be in writing.

(4) A change in ownership of the registration of a mark or a collective mark shall, however, be invalid if it is likely to deceive or cause confusion, particularly in regard to the nature, origin, manufacturing process, characteristics, or suitability for their purpose, of the goods or services in relation to which the mark or collective mark is intended to be used or is being used.

(5) Any license contract concerning a patent, a registered industrial design or a registered mark, or an application therefor, shall be submitted to the Registrar who shall keep its contents confidential but shall record it and publish a reference thereto. The license contract shall have no effect against third parties until such submission has been made.

Section 43

The purpose of this provision is to ensure that applicants resident outside the territory of Suriname are represented by a local attorney or agent admitted to represent clients before the Office of the Registrar.

Section 44

The structure will be determined in accordance with the administrative convenience of the Government and this Section should be amended accordingly if necessary.

Agents

43. Where an applicant's ordinary residence or principal place of business is outside Suriname, he shall be represented by a legal practitioner resident and practicing in Suriname.

Organization of the Office of the Registrar

44.(1)(a) The Office of the Registrar shall be established within the Ministry of [...].

(b) The Office of the Registrar shall be entrusted with all functions relating to the procedure for the grant of patents and the registration of industrial designs, marks and collective marks and for the administration of granted patents and registered industrial designs, marks and collective marks as specified in this Act and the Regulations.

(2)(a) The Registrar shall be appointed by the [...].

(b) The Registrar shall be assisted by a Deputy and such Assistant as may be appointed and shall superintend and perform all duties required by this Act and the Regulations and shall have the authority to carry out studies, programs or exchanges of items or services regarding domestic and international industrial property law.

(c) Decisions shall be signed by the Registrar or an official designated by him.

(3) The Minister shall determine the organizational structure and regulate all questions concerning the financial and budgetary system of the Office of the Registrar.

Registers;
Official Bulletin

45.(1)(a) The Office of the Registrar shall maintain separate Registers for patents, industrial designs and marks. Collective marks shall be registered in a special section of the Register of Marks. All the recordings provided for in this Act shall be effected in the said Registers.

(b) The Registers may be consulted by any person, and any person may obtain extracts therefrom, under the conditions prescribed in the Regulations.

(2) The Office of the Registrar shall publish in the Official Bulletin all the publications provided for in this Act.

Corrections of Errors;
Extension of Time

46.(1) The Registrar may, subject to any provision in the Regulations, correct any error of translation or transcription, clerical error or mistake in any application or document filed with the Office of the Registrar or in any recording effected pursuant to this Act or the Regulations.

(2) If 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 and the Regulations, upon notice to the parties concerned and upon such terms as he may direct. The extension may be granted though the time for doing the act or taking the proceeding has expired.

Exercise of
Discretionary
Powers

47. The Registrar shall give any party to a proceeding before him an opportunity of being heard before exercising adversely to that party any discretionary power vested in him by this Act or the Regulations.

Competence of
Court; Appeals

48.(1) The [...] Court shall have jurisdiction in cases of dispute relating to the application of this Act and the Regulations and in matters which under this Act [and the Regulations] are to be referred to the court.

(2) Any decision taken by the Registrar under this Act, in particular the grant of a patent or the registration of an industrial design or of a mark or collective mark, or the refusal of an application for such a grant or registration, may be the subject of an appeal by any interested party before the [...] Court and such appeal shall be filed within [two] months of the date of the decision.

Infringement;
Unlawful Acts;
Offenses

49.(1) Subject to Sections 10(4), 12, 13, 30(3) and 36(3), an infringement shall consist of the performance of any act referred to in Sections 10, 30 and 36 in Suriname by a person other than the owner of the title of protection and without the agreement of the latter.

(2)(a) On the request of the owner of the title of protection, or of a licensee if he has requested the owner to institute court proceedings for a specific relief and the owner has refused or failed to do so, the court may grant an injunction to prevent infringement, an imminent infringement, or an unlawful act referred to in Sections 40(2) and 41, award damages and grant any other remedy provided for in the general law.

(b) On the request of any competent authority or any interested person, association or syndicate, in particular of producers, manufacturers or traders, the court may grant the same relief in case of an act of unfair competition referred to in Section 41.

(3) Any person who knowingly performs an act which constitutes an infringement as defined in subsection (1) hereof or an unlawful act as defined in Sections 40(2) and 41 shall be guilty of an offense punishable by a fine not exceeding or by imprisonment for a term not exceeding, or by both.

(4) For the purposes of proceedings, other than criminal proceedings, in respect of the violation of the rights of the owner of the patent referred to in subsections (1) and (2), where the subject matter of the patent is a process for obtaining a product, the burden of establishing that a product was not made by the process shall be on the alleged infringer if either of the following conditions is fulfilled:

- (i) the product is new, or
- (ii) 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.

(5) In requiring the production of evidence, the Court before which the proceedings referred to in subsection (4) take place shall take into account the legitimate interests of the alleged infringer in not disclosing his manufacturing and business secrets.

Application of
International
Treaties

50. The provisions of any international treaties in respect of industrial property to which Suriname is a party shall apply to matters dealt with by this Act and, in case of conflict with provisions of this Act, shall prevail over the latter.

Regulations;
Administrative
Instructions

51.(1) The Minister shall issue Regulations prescribing details for the implementation of this Act. 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, marks and collective marks and matters related thereto.

(2) The Registrar may issue Administrative Instructions relating to the procedures under this Act and the Regulations as well as to the other functions of the Office of the Registrar.

Interpretation

52. In this Act, unless the context otherwise requires:

"Court" means the court referred to in Section 48;

"International Classification" means, as regards industrial designs, the classification according to the Locarno Agreement Establishing an International Classification for Industrial Designs and, as regards marks, the classification according to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, of June 15, 1957, as last revised;

"Minister" means the Minister of [...];

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

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

"Registers" means the Registers referred to in Section 45(1);

"Regulations" means the Regulations referred to in Section 51(1).

Entry Into Force; Repeals;
Transitional Provisions

53.(1) This Act shall enter into force on [.....]

(2) The following are hereby repealed:

[list of existing Laws]

(3) Notwithstanding the repeal of [...], patents granted and trademarks registered thereunder shall remain in force but shall, subject to subsections (4) and (5), be deemed to have been registered under this Act.

(4) Patents thus granted 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 provided for in this Act.

(5) Trademarks thus registered shall be due for renewal within the same period as under [...] and, upon renewal, shall be reclassified in accordance with the International Classification.

(6) The Minister may by [Order] [Statutory Instrument] make any further transitional or saving provisions which appear to him to be necessary or desirable.
