



THE ZANZIBAR INDUSTRIAL PROPERTY ACT NO. 4 OF 2008

ARRANGEMENT OF SECTIONS

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ACT NO. 4 OF 2008

I ASSENT


{ AMANI ABIED KARUME }
PRESIDENT OF ZANZIBAR
AND

CHAIRMAN OF THE REVOLUTIONARY COUNCIL

29th JULY, 2008

AN ACT TO REPEAL THE PATENT DECREE CAP. 157, TRADE
MARKS DECREE CAP. 159 AND DESIGNS (PROTECTION)
DECREE CAP. 158 AND TO ENACT THE ZANZIBAR
INDUSTRIAL PROPERTY ACT AND TO MAKE BETTER
PROVISIONS FOR THE REGISTRATION AND
PROTECTION OF INDUSTRIAL PROPERTY RIGHTS,
THEIR ENFORCEMENT AND OTHER MATTERS
INCIDENTAL THERETO

ENACTED by the House of Representatives of Zanzibar.

PART I
PRELIMINARY PROVISIONS

Short title commencement. 1.(1) This Act may be cited as the Zanzibar Industrial Property Act of 2008 and shall come into operation on such date as the Minister may appoint and publish in the Official Gazette.

(2) Notwithstanding the provision of sub section (1) of this section, the Minister may appoint different dates for the application of different Parts or Chapters of this Act.

Interpretation. 2. In this Act unless the context otherwise requires:-

"Budapest Treaty" means the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, done at Budapest on April 28, 1977, and amended on September 26, 1980;



"Business Identifier" means a variety of designations and distinctive signs such as marks, business symbols, emblems, logos and slogans used by an enterprise to convey, in the course of industrial or commercial activities, a certain identity with respect to the enterprise and the products produced or the services rendered by that enterprise;

"Certificate" means the title granted to protect a utility model, an industrial design, a layout-design (topography) of integrated circuit or a mark;

"Certification Signs" means signs or combination of signs capable of designating any common characteristic, including quality, origin or methods of production, of goods and services and which are used under the control of the owner of the signs;

"Competent Authority" means the Minister;

"Collective Mark" means any marks that belong to a collectivity, such as a cooperative or an association or federation of industrialists, producers or merchants;

"Compulsory License" means an authorization given by the competent authority to a person, firm or a private or state-owned or state-controlled entity, to exploit a patent, a utility model, a layout-design or an industrial design in Zanzibar without the approval of the right holder;

"Court" means High Court of Zanzibar;

"Court of Appeal" means Court of Appeal of Tanzania;

"Decision of the General Council of the World Trade Organization of August 30, 2003," means the Decision of the General Council of the World Trade Organization on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health;

"Exclusive License" means a license contract that confers on the licensee and, where it is established expressly therein, on the persons authorized by the licensee, the right to exploit the licensed industrial property right to the exclusion of all other persons (including the right owner);



"Geographical Indication" means an indication that identifies a good as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

"Government Use" means the use of the patented invention by any Government department or any person authorized by a Government department in the public interest without the consent of the patent holder;

"Industrial Design" means any composition of lines or colours or any three-dimensional form, whether or not associated with lines or colours, 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, and appeals to and is judged by the eye;

"Integrated Circuit" means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in or on a piece of material and which is intended to perform an electronic function;

"International Bureau" means International Bureau of the World Intellectual Property Organization (WIPO) established by the Convention signed at Stockholm on July 14, 1967;

"International Classification" means, as regards patents and utility models, the classification for patents for invention, inventors' certificates, utility models and utility certificates, known as the International Patent Classification", as established by the Strasbourg Agreement Concerning the International Patent Classification, of March 24, 1971, as amended on September 28, 1979, as regards industrial designs, the classification according to the Locarno Agreement Establishing an International Classification for Industrial Designs of October 8, 1968, as last revised 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;

"Invention" means an idea of an inventor, which permits in practice the solution to a specific problem in the field of technology, an invention may be, or may relate to a product or a process;



"Layout-Design" is synonymous with "topography" and means the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture;

"Local communities" are groups of citizens residing in the territory of Zanzibar and which collectively have a specific identity as well as social, cultural and economic characteristics that are peculiar to them and that differentiate them from the rest of the Zanzibar society;

"Mark" means any sign susceptible of being specifically represented graphically that is capable of distinguishing goods ("trademark") or services ("service mark") of one undertaking from those of other undertakings. A mark may, in particular, consist of words (including personal names), designs, letters, colors or combinations of colors, numerals or the shape of goods or their packaging, holograms, sounds and scents. Slogans, where they are not long enough to be protected by copyright, shall be protected as marks;

"Minister" means the Minister for the timebeing responsible for matters related to Industrial Property in Zanzibar;

"Journal" means the Official Journal published by the Registrar of Industrial Property Office;

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

"Patent" means the title granted to protect an invention.

"Patent Cooperation Treaty" means the Patent Cooperation Treaty, done at Washington on June 19, 1970, amended on September 28, 1979, modified on February 3, 1984, and October 3, 2001;

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

"President" means the President of Zanzibar and Chairman of the Revolutionary Council;



"Registrar" means the Registrar of the Industrial Property appointed under section 115(2) of this Act;

"Trade Name" means the name or designation identifying and distinguishing an enterprise;

"Traditional knowledge" means ideas, practices, uses and inventions, associated or not to biological diversity, created by local communities in a traditional and informal manner, as an answer to the challenges of their physical and cultural environment and that serve as an element of identification of those communities;

"Well known marks" are marks that are considered to be well known by the competent authority of the country where protection for the mark is sought.

"WTO" means the World Trade Organization;

"Utility Model" means a technical creation that consists of a new shape or configuration of an object or of a component of an object that increases its functionality or utility;

"Registrar General's Office" means the Office of the Registrar General of Zanzibar.

PART II TECHNICAL CREATIONS

CHAPTER I PATENTS

Matters excluded
from
Patent protection.

3.(1) The following 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;



- (iv) natural substances, even if purified, synthesized or otherwise isolated from nature; this provision shall not apply to the processes of isolating those natural substances from their original environment;
- (v) new uses or forms of known product or process;
- (vi) plants and animals, including their parts, including DNA, cells, seeds, varieties and species other than micro-organisms, and essentially biological processes for the production of plants or animals and their parts, other than non-biological and microbiological processes;
- (vii) animal and plant varieties;
- (viii) the human body and all its elements in whole or in part;
- (ix) inventions, the prevention within the territory of Zanzibar of the commercial exploitation of which is necessary to protect order public and morality including to protect human, animal or plant life or health or to avoid serious prejudice to the environment; such exclusion shall not be made merely because the exploitation of those inventions is prohibited by law;
- (x) pharmaceutical products and processes until January 1, 2016 or the expiry of such later period of extension agreed upon by the World Trade Organization Council for TRIPs.

(2) The provisions of subsection (1) of this section, shall not apply to the following inventions:

- (i) process inventions which, in whole or in part, consist of steps that are performed by a computer and directed by a computer program; and
- (ii) product inventions consisting of elements of a computer-implemented invention, including in particular of machine-readable computer program code stored on a tangible medium such as a floppy disk, computer hard drive or computer memory; and
- (iii) a general purpose computer whose novelty over the prior art arises primarily due to its combination with a specific computer program.



Patentable
inventions.

(3) Any applicant who has filed a patent applications for computer programs and computer-related inventions listed in subsection (2) of this section, waived his right of seeking copyright protection, if available.

4.(1) An invention shall be patentable if it is new, involves an inventive step, is industrially applicable and has not been excluded from patentability under the Zanzibar law.

(2)(a) An invention shall be new if it is not anticipated by prior art or where a theoretical person who is highly skilled in the relevant area could not derive the invention from a combination of publications;

(b) Prior art shall consist of everything disclosed to the public, anywhere in the world, by publication in tangible form including patent applications where such applications are subsequently published or by oral disclosure, by use or in any other way including material in any deposit institutions, prior to the filing or, where appropriate, the priority date, of the application claiming the invention;

(c) For the purposes of subsection (2)(b) of this section, disclosure to the public of the invention shall not be taken into consideration if it was by reason or in consequence 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 differences and similarities between the claimed invention and the prior art as defined in subsection (2) of this section, the claimed invention as a whole would not have been obvious to a person highly skilled in the art or when the method or claimed product are not disclosed in any single piece or any combination of pieces of prior art at the filing date or, if applicable, at priority date of the claimed invention.

(4) An invention shall be considered industrially applicable if it can be manufactured or otherwise industrially used.

(5) If it appears to the Registrar that any application so filed contains information the publication of which might be prejudicial to the interest of the public, the Registrar may give direction prohibiting or restricting the publication of that information or its communication to any specified person or persons until the end of a period not exceeding three months from the end of the period prescribed for the purposes of section 10(6)(a) of this Act.



Right to Patent,
naming of
Inventor.

5.(1) Subject to the provision of this section, right to a patent shall be owned by 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 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, and in order to establish the right of preference the Registrar shall take into account the matter claimed in the applications.

(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 purpose of which is to invent, the right to the patent shall belong, in the absence of contractual provisions to the contrary, to the employer, when the economic gains extracted by the employer are disproportionately high as compared to the employee's salary and the reasonable expectations of gain that the employer had from his employee's inventive output at the time he hired him, the employee shall be entitled to an equitable remuneration.

(6) Where an invention is made by an employee not in execution of an employment contract, but used materials, data or know-how of the employer, the right to the patent shall belong, in the absence of contractual provisions to the contrary, to the employer, the employee shall be entitled to a remuneration that is at least equivalent to one third of the net direct and indirect gains obtained by the employer from exploiting the invention, the obligation to pay the remuneration arises from the making of a patentable invention, not from the patent.

(7) When the employer neglects to file for a patent application within one year from the date on which the employee communicated to employer, the employee shall have the right to the patent, including the right to assign that right to any interested party and to license or transfer the patent, if granted.

(8) Any invention claimed in a patent application filed by the employee within one year after the expiry of the employment contract and that falls within the scope of the former employer's main business, shall be presumed to have been made under the expired contract, unless the employee produces evidence to the contrary.



(9) Any anticipated promise or undertaking by the inventor made to his employer to the effect that he will waive any remuneration entitled to under this section shall be without legal effect.

(10) 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.

(11) This Section shall apply to employees of both private and public sector.

Application.

6.(1) The application for a patent shall be filed to the Registrar and shall contain a request, a description, one or more claims, one or more drawings (where required), an abstract and such other details as shall be prescribed by the Regulations made under this Act.

(2) Where the applicant's ordinary residence or principal place of business is outside Zanzibar, he shall be represented by an agent who has been certified to practice in Zanzibar.

(3)(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.

(4)(a) 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 the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application;

(b) The disclosure of the claimed invention shall be considered sufficiently clear and complete if it provides information which is sufficient to allow that invention to be made and used by a person skilled in the art on the filing date, without undue experimentation,



for the purposes of assessing sufficiency of disclosure, the disclosure contained in the description, claims and drawings, as established on the date in which the sufficiency of disclosure was examined, shall be taken into account.

- (c) The description shall contain a clear identification of the origin of genetic or biological resources as well as of any element of traditional knowledge collected in the territory of Zanzibar and that were directly or indirectly used in the making of the claimed invention without the prior informed consent of its individual or collective creators.
 - (d) For the purposes of this Section, a person having ordinary skill in the art is understood as a citizen of Tanzania and who carries out his profession in Zanzibar, having acquired an average expertise and experience in the technical field of the claimed invention.
 - (e) The Registrar may, at any time before the grant of the patent, require the description in foreign patent applications to be adapted to the ordinary skill in the art of the citizens of Tanzania residing in Zanzibar so as to ensure technology dissemination.
 - (f) As regards patent applications concerning micro-organisms, the Registrar shall consider the requirements of paragraph (a) of this subsection complied with when the applicant, together with the application, submits a declaration that the micro-organism or micro-organisms to which the application relates has (have) been deposited with an international depositary authority, in accordance with the Budapest Treaty and its Regulations, in addition to a sample of the referred micro-organism(s), the Registrar shall recognize the deposit and its date of the deposit as indicated by the international depositary authority as well as that what is furnished as a sample is a sample of the deposited microorganism, provided that the applicant provides him with a copy of the receipt of the deposit issued by the international depositary authority.
- (5)(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 and shall be supported by full description.



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

(7) The abstract, which must be concise and precise, 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, unless it is necessary otherwise, the abstract shall have no more than three hundred words.

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

(b) Where the application has been withdrawn without having been opened to public inspection, and

(i) no priority rights have been claimed by virtue of such application; and

(ii) no rights are outstanding in Zanzibar in connection with such application,

a subsequent application can be filed in Zanzibar in respect of the same invention, such subsequent application shall be regarded as the first application in respect of that invention, no priority rights shall be claimed on the withdrawn application after the lodging of the subsequent application.

7.(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 and after paying the amendment fee, amend the application, provided that the amendment shall not go beyond the matter claimed in the initial application.

(3)(a) The applicant may, up to the time when the application is in order for grant and after paying the amendment fee, divide the application into two or more applications ("divisional applications"), provided that each divisional application shall not go beyond the matter claimed in the initial application;

(b) Each divisional application shall be entitled to the filing date and, where applicable, the priority dates 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) of this section shall not be a ground for the invalidation of the patent.

Unity of
Invention,
amendment
and division of
application.



Right of
Priority.

- 8.(1)(a) The application may contain a declaration claiming the priority, as provided for in the Paris Convention, of one or more earlier national or regional applications filed by the applicant or his predecessor in title in or for any State party to the said Convention and any Member of the World Trade Organization, consequently, the filing in Zanzibar of that application before the expiration of the periods referred to in paragraph (b) of this subsection shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, the publication or exploitation of the invention, and such acts cannot give rise to any third-party right or any right of personal possession.
- (b) The period of priority under subsection (a) is of twelve months and shall be counted in accordance with the provisions of Article 4 of the Paris Convention.

(2) Where the application contains a declaration under subsection (1) of this section, the Registrar may request that the applicant furnish, within the prescribed time limit, a copy of the earlier application certified as correct by the Industrial Property Office with which it was filed, or where the earlier application is an international application filed under the Patent Cooperation Treaty, by the International Bureau.

(3) The Registrar shall accept the form and the content of the certification mentioned in subsection (2) of this section, as determined by the certifying authority.

(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
application
for patents.

9.(1) The applicant shall file along with his application the date and number of any application for a patent filed by him or by his predecessor abroad (foreign application) relating to the same or essentially the same invention as that claimed in the application filed in Zanzibar.

- (2)(a) The applicant shall furnish to the Registrar with the following documents relating to one of the foreign applications referred to in subsection (1) of this section, for the purpose of facilitating the evaluation of novelty claimed in the application filed to the Registrar or in the patent granted on the basis of that application:
- (i) copies 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 provide the Registrar, along with his application or immediately as soon as possible, a copy of any final decision revoking or invalidating the patent granted on the basis of the foreign application referred to in paragraph (a) of this subsection.

Filing date,
classification,
publication,
opposition,
examination and
mailbox.

10.(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;
- (iv) one or more claims identifying the characteristic elements of the invention.

- (b) If the Registrar finds that the application did not, at the time of receipt, fulfill the requirements referred to in paragraph (a) of this subsection, 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 are not included in the application, the Registrar shall invite the applicant to furnish the missing drawings, and if the applicant complies with the said invitation, the Registrar shall accord as the filing date the date of receipt of the missing drawings, otherwise, the Registrar shall accord as the filing date the date of receipt of the application and shall treat any reference to the said drawings as non-existent.

(3) After a filing date, and having the invention classified according to the International Classification, the Registrar shall examine whether the application complies with the requirements of section 6(1) to (3) 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 9 of this Act, if any, has been provided.

(4) Where the Registrar is of the opinion that the application complies with the requirements of subsection (3) of this section the Registrar shall make a decision as to whether the requirements of sections 3, 4 and 6 of this Act and the Regulations pertaining thereto and for this purpose shall, as provided for in the Regulations, cause the application to be examined.

(5) The Registrar shall take into account, for the purposes of subsection (4) of this section.

- (i) the results of any international search report and any international preliminary examination report established under the Patent Cooperation Treaty in relation to the application; or
 - (ii) a search and examination report relating to, or a final decision submitted under section 9(2)(a)(i) and (iii) of this Act 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.
- (6)(a) Immediately after eighteen months from the filing date, the Registrar shall open the patent application for public inspection, and Public notice of that act shall be given by means of the publication in the Official Gazette containing the following elements:
- (i) the number and the filing date of the application;
 - (ii) the title of the invention;
 - (iii) the name of the applicant(s) and of the inventor(s);
 - (iv) the priority date(s);
 - (v) the International Classification;
 - (vi) one drawing, if any, that depicts the main element(s) of the invention;
 - (vii) the abstract.



- (b) The fee corresponding to the filing of the application shall be in an adequate amount to cover the costs of the publication of the notice of the laying open of the application for public inspection.
 - (c) Any interested person shall receive a copy of the full contents of patent applications opened for public inspection, provided the prescribed fees are paid.
 - (d) The Registrar shall not give access to or information about the contents of the patent application to third persons until the notice mentioned in paragraph (a) of this subsection is published.
 - (e) Upon payment of the prescribed fee, at any time between the filing date and the end of the eighteen-month period, the applicant may request the Registrar to anticipate the laying open of the application for public inspection.
- (7)(a) After the publication of the notice mentioned in paragraph (a) of this subsection and before the patent is granted, any interested party may file to the Registrar a notice of opposition, and that notice shall identify the opposed patent application, as well as the grounds that the opponent deems relevant to bar the grant as well as all relevant evidence, failure to meet the formal or substantive conditions of patentability as established in sections 3, 4 and 6 of this Act can be alleged by the opponent.
- (b) The Registrar shall give notice of the opposition in the Official Gazette.
 - (c) The patent applicant shall have sixty days from the publication of the notice of opposition for filing a counter-statement.
 - (d) The Registrar may, if he deems so convenient, grant a hearing at which the patent applicant and the opponent may argue and counter-argue their case and submit additional evidence, if available.

(8) Subsection (1) of this section shall apply to the inventions mentioned in section 3(1)(x) of this Act, immediately after the commencement of this Act, with regard to pharmaceutical products and process, the Industrial Property Office shall receive patent applications and shall maintain such applications pending their examination as of 1st January 2016 or such later period of extension agreed upon by the World Trade Organization Council for TRIPS.



Grant of patent and changes in patents.

11.(1) Where the Registrar finds that the conditions referred to in section 10(4) of this Act are fulfilled, shall grant the patent, otherwise, he may refuse the application and notify the applicant of that decision.

(2) If the Registrar grants a patent, 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, 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, in no event can the change result in the matter claimed in the patent going beyond the matter claimed in the initial application on the basis of which the patent was granted, otherwise it shall be without effect.

Rights conferred by the patent.

12.(1) A patent shall confer on its owner the right to prevent third parties from exploiting the patented invention in Zanzibar.

(2) For the purposes of this Act, "exploiting" 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) of this subsection 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 14, and in accordance with the provisions of Part IV, 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) of this section.

(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 any territory or country by the owner of the patent or by any party authorized to use the invention, consequently exhausting the patent owner's rights; 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 Zanzibar; or
- (iii) to acts done relating to experimental use on or relating to the patented invention, whether for scientific or commercial purposes; 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, was using the invention or was making effective and serious preparations for such use in Zanzibar (the "prior user"); it is understood that this exception does not apply to articles in excess of those made or to quantities in excess of those produced by the prior user on the filing or on the priority date or to those articles or quantities in excess of those that the prior user could reasonably expect to make or produce as a result of his preparations; a prior user that is unequivocally engaged in concealing the invention and has no reasonable justification for not having filed a patent application expeditiously shall not enjoy from this exception;
- (v) to an infringement of a patent for any person who make, construct, use or sell the patented invention solely for uses reasonably related to the development and submission of information required under any law of Zanzibar or a country other than Zanzibar that regulates the manufacture, construction, use or sale of any product.



(5) The right of the prior user referred to in subsection (4) (a) (iv) of this section, 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 and restoration.

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

(b) In the event a patent is granted more than four years after the filing date, the term of protection of that patent may be extended by the Registrar so as to compensate for any period of time in excess of four years from the filing date if the patent holder applies.

(2) In order to maintain the patent or patent application, including the patent applications to which section 3(1)(ix) of this Act refers, a progressively increasing 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, fees shall also be due in the case of the patent applications referred to in section 10(7) of this Act, a period of grace of six months shall be allowed for the late payment of the annual fee on payment of the prescribed surcharge.

(3) If an annual fee is not paid in accordance with the provisions of this subsection, the patent application shall be deemed to have been withdrawn or the patent shall lapse, and the Registrar may restore the lapsed patent at any time before the end of a period of one year after the period in which the payment should have been made, if he is satisfied that the non-payment of fees was justifiable and that rights of third parties that may have arisen in the meantime are not unreasonably harmed.

Compulsory licenses and Government use.

14.(1)(a) Where

- (i) the public interest, in particular, national security, national emergency, nutrition, health, or the development of other vital sectors of the national economy so requires; or
- (ii) a judicial or administrative body 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; or
- (iii) the owner of the patent is abusively exercising his exclusive rights or neglecting in taking measures to prevent his licensee(s) from abusively exercising the licensed exclusive rights; or



- (iv) the invention is not available in sufficient quantities or quality or at predetermined reasonable prices in Zanzibar, either through manufacture in Zanzibar or through importation; or
- (v) the patented invention which is capable of being worked in Zanzibar is not being worked or is not being so worked to the fullest extent that is reasonably practicable, after the expiry of 3 years from the grant of the patent or 4 years from the filing of patent application; or
- (vi) the applicant for the license has unsuccessfully endeavoured during a period of 90 days to obtain the patent holder's consent for the use of the patented invention under reasonable terms and conditions; or
- (vii) the second patent claiming an invention that involves an important technical advance of considerable economic significance in relation to an invention claimed in first patent without infringing which the second patent cannot be exploited,

the Minister may decide that, even without the agreement of the owner of the patent, a Government agency or any other person, firm or corporation, undertaking any activity for or on behalf of the Government department or a third person either designated by the Minister or by application may exploit the invention, each request for a compulsory license shall be considered by the Minister on its individual merits, the exploitation of the invention shall be limited to the purpose for which it was licensed and shall be subject to the payment to the said owner of an adequate remuneration in the circumstances of each case, taking into account the economic value of the Minister's decision, as determined in the said decision, and, where a decision has been taken under paragraph (ii) of this paragraph, the need to correct anti-competitive practices.

- (b) The remuneration of a compulsory license shall be determined as a percentage of net sales taking into account the value of the license in the relevant domestic market, but shall not exceed 4%, the remuneration shall be reduced or excluded when the license is necessary to remedy anti-competitive practices where importation takes places pursuant to the Decision of the General Council of the World Trade Organization of August 30, 2003 or Article 31 TRIPS whichever that is applicable, and the exporting country issues a compulsory license for the same patented invention, payment of remuneration is waived.



(2) Upon request of the owner of the patent, of the Government agency or any other person, firm or corporation undertaking any activity for or on behalf of the Government department or of the third person licensed 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.

(3)(a) Upon the request of the owner of the patent, the Minister may terminate the compulsory license 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 unlikely to recur.

(b) Notwithstanding paragraph (a), the Minister shall not terminate the compulsory license if he is satisfied that the need for adequate protection of the legitimate interests of the Government agency or any other person, firm or corporation undertaking any activity for or on behalf of the Government department or third person designated by him justifies the maintenance of the decision or, if the compulsory license was granted to remedy an anti-competitive practice under subsection (1) (a) (ii) of this section and when the conditions which led to such compulsory license are likely to recur, if the compulsory license is terminated, the Minister shall ensure that the legitimate interests of the compulsory licensee are adequately protected, particularly when the compulsory licensee has made serious preparations or commenced to execute the invention.

(4) The compulsory license 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.

(5) The compulsory license shall always be non-exclusive, and not exclude:

(i) the exploitation of the invention by the patent owner himself, either through manufacture in Zanzibar or through importation or both; and

(ii) the conclusion of license contracts by the owner of the patent; and

(iii) the continued exercise, by the owner of the patent, of his rights under section 12(1) (2) and (3) of this Act.



- (6)(a) A request for the compulsory license shall be addressed to the Minister and accompanied by evidence that the owner of the patent has received, from the person seeking the compulsory license, 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 period of forty five days of the request for a contractual license.
- (b) Evidence concerning a previous attempt of obtaining a voluntary license, under paragraph (a), shall not be required in cases of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use or when the license is granted to remedy a practice determined after judicial or administrative process to be anti-competitive, provided, however, that in such cases the owner of the patent shall be notified of the Minister's decision as soon as reasonably practicable.

(7) The exploitation of the invention by the Government agency or any other person, firm or corporation undertaking any activity for or on behalf of the government department or third person licensed by the Minister shall be predominantly for the supply of the market in Zanzibar except if it is under section 14(1)(a)(ii) of this Act or where the purpose of the compulsory license is to export in accordance with the terms and conditions of the decision of the General Council of the World Trade Organization of August 30, 2003 or in accordance with Art. 31 of TRIPS when it enters into force.

(8) Compulsory licenses of inventions in the field of semi-conductor technology shall only be granted for public non-commercial use or where a judicial or administrative body has determined that the manner of exploitation of the patented inventions, by the owner of the patents or his licensees, is anti-competitive and if the Minister is satisfied that the issuance of the non-voluntary license would remedy such practice.

(9) Where a compulsory license is granted under subsection (1)(vii), of this section.

- (a) the owner of the first patent shall be entitled to a cross-license on reasonable terms to use the invention claimed in the second patent; and
- (b) the license of the first patent shall be non-assignable except with the assignment of the second patent.

(10) The provisions of this section shall apply, where appropriate and mutatis mutandis, to pending patent applications, except in the case of insufficient availability of the patented product or of the product manufactured with the patented process.



(11) Notwithstanding anything in this Act, any Government department or any person authorized by competent authority may, for the interest of the public, make, use, exercise, import, keep and vend any patented invention; and anything done by virtue of this subsection shall not amount to infringement of the patent concerned and any appeal against the determination of the Minister shall not stay or suspend the Government use.

Transfer of the patent in the event of use of illegally accessed genetic resources.

15.(1) The competent authority shall be entitled to claim proprietary interests on any patent application filed or granted that does not comply with the provisions of section 6(4) (b) of this Act as regards genetic resources, the competent authority shall notify the Registrar to assign to it or to any agency or entity designated by the competent authority a share in the application or in the resulting patent, which can never be less than twenty percent of the ownership of the claimed invention, when the violation of section 6(4)(b) of this Act as regards genetic resources generates strong public concern or raises issues of morality and public order, the competent authority, if vested in the total ownership of the application or the resulting patent, may withdraw the application or abandon the patent, so that the claimed invention falls into public domain.

(2) This section shall be applied without prejudice to the application of section 73(5) (d) of this Act.

Invalidation.

16.(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 for patentability in this Act is not fulfilled or if the owner of the patent is not the inventor or his successor in title.

(3) When the grounds for invalidation are established with respect only to a part of the invention, only the corresponding claim or claims shall be invalidated.

(4) 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, and shall be deemed as if it had never been granted.

(5) In the event of a dispute over the right to the patent, the interested person may ask the Court to transfer the title to him instead of invalidating it.

(6) The final decision of the Court shall be notified to the Registrar who shall record it and publish a reference thereto in accordance with the Regulations.

CHAPTER II UTILITY MODEL CERTIFICATES

Registrable utility models.

17.(1) An invention is registrable as a utility model if it is new, involves a sufficiently inventive step and is industrially applicable.



- (2)(a) A utility model 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 of the utility model to the public shall not be taken into consideration if it occurred within twelve months preceding the filing date or, where applicable, the priority date of the application, and if it was by reason or in consequence of 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) A utility model shall be considered as involving a sufficiently inventive step if, having regard to the differences and similarities between the claimed utility model and the prior art as defined in subsection (2) (b) of this section the utility model does not result in a common manner from the prior art relevant to a person having ordinary skill in the art.

(4) A utility model shall be considered industrially applicable if it can be made or used in any kind of industry or if it is a component of an object that can be made or used in any kind of industry, the term "industry" shall be understood in its broadest sense, as any human economic activity leading to the production of goods and services, it shall cover, in particular, handicraft, agriculture, fishery and services.

(5) Utility models, the prevention within the territory of Zanzibar of the commercial exploitation of which is necessary to protect public order and morality, shall be excluded from registrability.

18.(1) The right to a utility model certificate shall belong to the inventor.

(2) If two or more persons have jointly made a utility model, the right to the certificate 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 certificate, as long as the said application is not withdrawn, abandoned or rejected, in order to establish the right of preference the Court shall take into account the matter claimed in the applications.

Right to
certificate
naming of
inventor.



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

(5) The provisions of section 5 of this Act shall apply mutatis mutandis to utility models.

(6) The inventor shall be named as such in the certificate, unless in a special written declaration signed by him and addressed to the Registrar he indicates that he wishes not to be named.

(7) 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,
amendment,
principles of unity
of invention.

19.(1) The application for a certificate shall be filed to the Registrar and shall contain a request, a description, one or more claims, one or more drawings where required, and an abstract.

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

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

(3) The description shall disclose the utility model in a manner sufficiently clear and complete for the utility model to be carried out by a person having ordinary skill in the art, and shall, in particular, indicate how the claimed utility model enhances the utility or functionality of the object.

(4)(a) The claim or claims shall define the matter for which protection is sought.

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

(c) The claims shall be clear and concise, and shall be supported by the description.

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



(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 while it is pending.

(8) The application shall relate to one utility model only or to a group of utility models so linked as to form a single general inventive concept.

(9) 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 matter claimed in the initial application.

(10)(a) The applicant may, up to the time when the application is in order for grant, divide the application into two or more applications, provided that each divisional application shall not go beyond the matter claimed in the initial application and that it will cover a whole inventive concept.

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

(11) The fact that a certificate has been granted on an application that did not comply with the requirement of unity of invention under Section (8) of this Act, shall not be a ground for the invalidation of the certificate.

Right of Priority. 20. The provision of section 8 of this Act shall apply mutatis mutandis to utility models.

Information concerning corresponding foreign applications and utility model certificates and patents.

21. (1) The applicant shall furnish the Registrar with the date and number of any application for a certificate or a patent filed by him abroad relating to the same or essentially the same invention as that claimed in the application filed with the Industrial Property Office.

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

(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 certificate or patent granted on the basis of the foreign application;



Filing date,
classification,
examination, grant
of a certificate
and charges in
certificates.

- (iii) a copy of any final decision rejecting the foreign application or refusing the grant requested in the foreign application.
 - (b) The applicant shall furnish the Registrar with a copy of any final decision invalidating the certificate granted on the basis of the foreign application referred to in paragraph (a) of this sub section.
- 22.(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 certificate 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 a utility model;
 - (iv) One or more claims identifying the characteristic elements of the utility model.
- (b) If the Registrar finds that the application did not, at the time of receipt, fulfill the requirements referred to in paragraph (a) of this subsection, 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, and if the applicant complies with the said invitation, the Registrar shall accord as the filing date the date of receipt of the missing drawings, otherwise, the Registrar shall accord as the filing date the date of receipt of the application and shall treat any reference to the said drawings as non-existent.
- (3) The Registrar shall order the utility model that is subject to a certificate application to be classified.
- (4) After according a filing date and having the utility model classified according to the International Classification, the Registrar shall examine whether the application complies with the requirements of section 19(1) and (2) of this Act and the Regulations



pertaining thereto and whether information under section 21 of this Act if any, has been provided.

(5) Where the Registrar is satisfied that the application complies with the requirements provided in subsection (4) of this sub section, shall grant the certificate, otherwise, shall refuse the application and notify the applicant of that decision.

(6) When he grants a certificate, the Registrar shall:

- (i) publish a reference to the grant of the certificate;
- (ii) issue to the applicant a notice of the grant of the certificate and a copy of the certificate;
- (iii) record the certificate;
- (iv) make copies of the certificate available to the public, on payment of the prescribed fee.

(7) The Registrar shall, upon request of the owner of the certificate, make changes in the text or drawings of the certificate in order to limit the extent of the protection conferred thereby, provided that the changes would not result in the matter claimed contained in the certificate going beyond the matter claimed in the initial application on the basis of which the certificate was granted.

Rights conferred
by utility model
certificates.

23.(1) A utility model certificate shall confer on its owner the right to prevent third parties from exploiting the registered utility model in Zanzibar.

(2) For the purposes of this Act, "exploitation" of a registered utility model means any of the following acts:

- (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.

(3) The owner of the certificate shall also have the right to assign, or transfer by succession, the utility model and to conclude licensing contracts.

(4)(a) The owner of the certificate shall, in addition to any other rights, remedies or actions available to him, have the right, subject to subsection (5) of this section and section 25 of this Act, and in accordance with Part IV in this Act, to institute court proceedings against any person who infringes the certificate by performing, without his agreement, any of the acts referred to in subsection (2) of this section or who performs acts which make it likely that infringement will occur.



- (b) Upon receipt of the action, the Court shall order the utility model certificate to be examined as to compliance with the provisions of sections 2, 17 and 19(3), of this Act, the Registrar shall transmit the result of such examination to the Court in no more than one hundred and twenty days, that result shall have the value of a rebuttable presumption as regards the validity or invalidity of the certificate.
- (c) During the period in which the Registrar examines the utility model, the Court may order provisional measures to prevent an infringement from occurring or to preserve relevant evidence in regard to the alleged infringement.

(5) The provisions of section 12(4) and (5) of this Act, shall apply, mutatis mutandis, to utility models.

Duration of
annual fees and
restoration.

24.(1) Subject to subsection (2), a certificate shall expire ten years after the filing date of the application for the certificate.

(2) In order to maintain the certificate or certificate aApplication, 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 certificate, 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 utility model certificate application shall be deemed to have been withdrawn or the utility model certificate shall lapse.

(3) The Registrar may restore the lapsed utility model certificate at any time before the end of a period of one year after the period in which the payment should have been made, if he is satisfied that the non-payment of fees was justifiable and that rights of third parties that may have arisen in the meantime are not unreasonably harmed.

Compulsory
licenses.

25. The provisions of section 14 of this Act, shall apply, mutatis mutandis, to utility model certificates.

Invalidation.

26.(1) Any interested person may request the Court to invalidate a certificate.

(2) The Court shall invalidate the utility model certificate, if the person requesting the invalidation proves that any of the requirements of sections 2, 17 and 19(3) of this Act is not fulfilled or if the owner of the certificate is not the inventor or his successor in title.

(3) When the grounds for invalidation are established with respect only to a part of the invention, only the corresponding claim or claims shall be invalidated.

(4) 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.



(5) In the event of a dispute over the right to the patent, the interested person may ask the Court to transfer the title to him instead of invalidating it.

(6) 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.

Conversion of patent and industrial design certificate, application or applications for utility model certificates.

27.(1)(a) At any time before the technical examination of a patent application or in any case before the grant or refusal of a patent or of an industrial design certificate, an applicant for a patent or for an industrial design certificate may, upon payment of the prescribed fee, convert his application into an application for a utility model certificate, which shall be accorded the filing date of the initial application.

(b) At any time before the grant or refusal of a utility model certificate, an applicant for a utility model certificate may, upon payment of the prescribed fee, convert his application into a patent or an industrial designs certificate application, which shall be accorded the filing date of the initial application.

(2) An application shall not be converted under subsection (1) of this section more than once.

Subsidiary application of provisions relating to patents.

28. The provisions of Chapter I of Part I as well as other provisions that apply to patents and patent applications, shall apply mutatis mutandis to utility model certificates where they are compatible or not superseded by the provisions of this Part.

CHAPTER III INDUSTRIAL DESIGNS

Subject matter of protection.

29. The protection under this Part 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.

Registrable industrial designs, priority.

30.(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.

(3) The provision of sections 4(2)(c) and 9 of this Act shall apply mutatis mutandis to industrial designs, except that the period determined in section 8(1)(b) of this Act, shall be of six months, consequently, the filing of the application in Zanzibar before the expiration of the period referred to above shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing or the putting on sale of copies of the design and such acts cannot give rise to any third-party right or any right of personal possession.



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

Right to registration of industrial design and naming of creator.

31. The provisions of section 5 of this Act shall apply mutatis mutandis to industrial designs.

Application.

32.(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.

(2) The request 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.

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

(4) Two or more industrial designs may be the subject of the same application, provided that 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.

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

(7) The provisions of section 6(8)(b) of this Act shall apply mutatis mutandis to industrial designs.

Examination, registration and publication of industrial designs.

33.(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 or a specimen thereof.

(2) The provisions of section 10(1) (b) of this Act shall apply mutatis mutandis.

(3) After according a filing date, the Registrar shall examine whether the application complies with the requirements of section 32(1) and (2) of this Act and the Regulations pertaining thereto and whether the application fee has been paid.



- (4)(a) Where the Registrar finds that the conditions referred to in subsection (2) hereof are fulfilled, he shall publish in the Official Gazette a notice that he is ready to 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.
- (b) Within ninety days from the publication of the notice referred to in paragraph (a) of this subsection, the applicant shall pay the prescribed fee, which shall be prescribed in a manner as to cover the costs of registration, publication and issuance of the certificate of registration, as well as a period of five years of the term of protection, if the fee is not paid timely, the Registrar may concede an extension of ninety days if he is satisfied that the applicant was able to justify the failure to pay the fee timely, otherwise, the applicant shall be cancelled by the Registrar, and shall be no restoration of cancelled designs.
- (5)(a) Notwithstanding subsection (3) of this section, where a request has been made under section 32(5) of this Act 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.
- (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.

34.(1) An industrial design certificate shall confer on its owner the right to prevent others from exploiting the registered industrial design in Zanzibar.

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



(3) The provisions of section 12 (4) (a) (i) and (5) of this Act shall apply mutatis mutandis to registered industrial designs.

(4) In accordance with Part IV, 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 consent, any of the acts referred to in subsection (2) of this section 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, if the owner so requests, according to the Regulations, and upon the payment of the prescribed fee, the registration shall be renewed for two further consecutive periods of five years, a period of grace of three months shall be allowed for the late payment of the renewal fee on payment of the prescribed surcharge, otherwise the registered industrial design shall lapse, and shall be no restoration of lapsed registered industrial designs.

Invalidation.

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

(2)(a) The Court shall invalidate the registration if the person requesting the invalidation proves that any of the requirements of sections 2, 29 and 30 of this Act is not fulfilled or if the registered owner of the industrial design is not the creator or his successor in title.

(b) The Court may order that the title should be transferred to the creator or his successor instead of invalidating it.

(3) The provisions of section 16(4), (5) and (6) of this Act shall apply mutatis mutandis to industrial designs.

Compulsory licenses.

36. The provisions of section 14 of this Act shall apply mutatis mutandis to industrial designs.

CHAPTER IV LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

Subject matter and protection.

37.(1) Protection under this Chapter may be obtained for layout-designs of integrated circuits if and to the extent that they are original within the meaning of section 38 of this Act.



(2) Registration may only be applied for if the layout-design has not yet been commercially exploited, or has been commercially exploited for not more than two years, anywhere in the world.

(3) For the purpose of this Chapter, "right holder" means the natural person who, or the legal entity which, is to be regarded as the beneficiary of the protection referred to in section 39 of this Act.

Originality.

38.(1) A layout-design shall be considered to be original if it is the result of its creator's own intellectual effort and is not commonplace among creators of layout-designs and manufacturers of integrated circuits at the time of its creation.

(2) A layout-design consisting of a combination of elements and interconnections that are commonplace shall be protected only if the combination, taken as a whole, is original within the meaning of subsection (1) of this section.

Right to protection.

39.(1) The right to layout-design protection shall belong to the creator of the layout-design, may be assigned or transferred by succession, and where several persons have jointly created a layout-design, the right shall belong to them jointly.

(2) The provisions of section 5 of this Act shall apply, mutatis mutandis, to layout-designs.

Effect of protection.

40.(1) The Protection under this Act shall not depend upon whether or not the integrated circuit which incorporates the protected layout-design is itself incorporated in an article.

(2) Subject to subsection (3) of this section, the protection shall have the effect that the following acts shall be unlawful if performed without the authorization of the right holder:

- (i) reproducing, whether by incorporation in an integrated circuit or otherwise, the protected layout-design in its entirety or any part thereof, except the act of reproducing any part that does not comply with the requirement of originality referred to in section 38 of this Act;
- (ii) importing, selling or otherwise distributing for commercial purposes the protected layout-design, an integrated circuit in which the protected layout-design is incorporated or an article incorporating such an integrated circuit in so far as it continues to contain an unlawful reproduced layout-design.

(3) The effect of protection of a layout-design under this Act shall not extend to:

- (i) reproduction of the protected layout-design for private purposes or for the sole purpose of evaluation, analysis, research or teaching; or



- (ii) the incorporation in an integrated circuit of a layout-design created on the basis of such analysis or evaluation and which is itself original in the meaning of section 38 of this Act or the performance of any of the acts referred to in subsection (1) in respect of that layout-design; or
- (iii) the performance of any of the acts referred to in subsection (2)(ii) where the act is performed in respect of a protected layout-design, or in respect of an integrated circuit in which such a layout-design is incorporated, that has been put on the market in any territory or country by, or with the consent of, the right holder, and consequently exhausting the rights of the right holder; or
- (iv) the performance of any of the acts referred to in subsection (2)(ii) in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering such an act did not know and had no reasonable ground to know, when acquiring the integrated circuit or the article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design; however, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, that person may perform any of the said acts only with respect to the stock on hand or ordered before such time and shall be liable to pay to the right holder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated license in respect of such a layout-design; or
- (v) the performance of any of the acts referred to in subsection (2)(ii) where the act is performed in respect of an identical layout-design which is original and has been created independently by a third party.

(4) Without prejudice to the provisions of subsection 2(iii) of this section, the Minister shall have the authority, on his own or at the request of any interested party, of declaring the layout-design certificate rights exhausted, and thus of authorizing others to import the acquiring the registered integrated circuit or the article incorporating such an integrated circuit ("the product") from another territory when that product is not available in the territory of Zanzibar or is available in the territory of Zanzibar with unreasonably low quality standards or in a quantity that is not sufficient to meet the local demand or at prices that the Minister deems abusive or for any other reason of public interest, including anticompetitive practices, provided that:



- (i) the product has been put in the channels of commerce in the territory from which it will be imported by the owner of the layout-design certificate or with his consent; and
- (ii) the layout-design in question is protected in the territory from which the product will be imported and is owned by the same person who owns the layout-design certificate in Zanzibar or by a person under his control.

(5) If the importer fails to fulfill the purpose that justified the Minister's decision to consider the right holder's rights exhausted, the Minister shall, on his own, or at the request of the right holder, cancel the authorization.

(6) If the conditions that gave rise to the Minister's decision to consider the right holder's rights exhausted cease to exist, the Minister may, on his own or at the request of the right holder, cancel the authorization, provided that the legitimate interests of the importer are taken into account, including but not exclusively that the importer will retain the right to commercialize the products that remain on stock.

Commencement
and duration of
protection.

41.(1) Protection of a layout-design under this Act shall commence:

- (i) on the date of the first commercial exploitation, anywhere in the world, of the layout-design by, or with the consent of, the right holder, provided an application for protection is filed by the right holder with the Registrar's Office within the time limit referred to in section 37(2) of this Act; or
- (ii) on the filing date accorded to the application for the registration of the layout-design filed by the right holder, if the layout-design has not been previously exploited commercially anywhere in the world.

(2) Protection of a layout-design under this Act shall terminate at the end of the tenth calendar year after the date of commencement of protection.

Application
requirements.

42.(1) Applications for the registration of layout-designs shall be in writing and shall be filed with the Registrar's Office, a separate application shall be filed for each layout-design.

(2) The application shall:

- (i) contain a request for registration of the layout-design in the Register of layout-designs and a brief and precise designation thereof;



- (ii) indicate the name, address, nationality and, if different from the address, the habitual residence of the applicant;
- (iii) be accompanied by the power of attorney appointing the representative of the applicant, if any, and by a copy or drawing of the layout-design along with information defining the electronic function which the integrated circuit is intended to perform; however, the application may omit such parts of the copy or drawing that relate to the manner of manufacture of the integrated circuit, provided that the parts submitted are sufficient to allow the identification of the layout-design;
- (iv) specify the date of first commercial exploitation of the layout-design anywhere in the world or indicate that such exploitation has not commenced; and
- (v) provide particulars establishing the right to protection under section 39 of this Act.

(3) Where the application does not duly comply with the requirements of subsection (2) of this section, the Registrar shall notify the applicant of the defects and invite him to correct them within two months, if the defects are corrected within the time limit, the Registrar shall accord as the filing date the date of receipt of the application, provided that, at the time of receipt, the application contained an express or implicit indication that the registration of a layout-design is requested and indications allowing the identity of the applicant to be established and was accompanied by a copy or drawing of the layout-design, where the latter requirements were not complied with at the date of receipt of the application but are corrected within the time limit, the date of receipt of the required correction shall be deemed to be the filing date of the application, the Registrar shall confirm the filing date and communicate it to the applicant, if the defects are not corrected within the time limit, the application shall be deemed not to have been filed.

(4) Each application for protection of a layout-design shall be subject to the payment of the prescribed fee, if the fee is not paid, the Registrar's Office shall notify the applicant that the application will be deemed not to have been filed unless payment is made within two months from the date of the notification, if the application fee is not paid within that time limit, the application shall be deemed not to have been filed.

Register registration and publication.

43.(1) Where the application complies with the requirements of section 42 of this Act, the Registrar shall register the layout-design in the Register of layout-designs without examination of the originality of the layout design, the applicant's entitlement to protection or the correctness of the facts stated in the application.



(2) The Register of Layout-Designs shall contain the number, title, filing date and, where indicated in the application under section 42(2) (iii) of this Act the date of first commercial exploitation, anywhere in the world, of the layout-design as well as the name and address of the right holder and other prescribed particulars.

(3) Any person may consult the Register of Layout Designs and obtain extracts therefrom, subject to the payment of the prescribed fee.

(4) The registration of a layout-design shall be published in the Official Gazette.

Invalidation.

44.(1) Any interested person may request that the registration of a layout-design be invalidated on the grounds that:

- (i) the layout-design is not protectable under sections 2, 37 and 38 of this Act,
- (ii) the right holder is not entitled to protection under section 39 of this Act, or
- (iii) where the layout-design has been commercially exploited anywhere in the world, before the filing of the application for registration of the layout-design, the said application was not filed within the time limit referred to in sections 37(2) of this Act.

(2) Where the grounds for invalidation are established with respect only to a part of the layout-design, only the corresponding part of the registration shall be invalidated.

(3) A request for invalidation of the registration of the layout-design shall be filed with the Court and shall state the grounds on which it is based.

(4) In the event of a dispute over the right to the layout-design registration, the interested person may ask the Court to transfer the title to him instead of invalidating it.

(5) Any invalidated layout-design registration, or part thereof, shall be regarded as null and void from the date of the commencement of protection.

(6) The final decision of the Court shall be notified to the Registrar who shall record it and publish a reference thereto in accordance with the Regulations.

Compulsory
Licenses.

45.(1) Subject to subsection (2), the provisions of section 15 of this Act, shall apply to registered layout-designs (topographies) of integrated circuits.



(2) The compulsory licenses of registered layout-designs shall be granted only for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive.

PART III DISTINCTIVE SIGNS.

CHAPTER I TRADE MARKS, SERVICE MARKS, COLLECTIVE MARKS, CERTIFICATION SIGNS AND TRADE NAMES

Acquisition of the exclusive right to a mark registrability. 46.(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; the scent or other material characteristic of goods shall not be deemed capable of distinguishing the goods when they result normally from the common composition of those goods;
- (ii) if it is contrary to public order or morality; it shall be understood, however, that the nature of the goods or services to which a mark is to be applied shall in no case form an obstacle to registration of the mark;
- (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; the provisions of sections 66 and 77 of this Act shall apply;
- (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 Zanzibar for identical or similar goods or services of another enterprise, or if it is well-known and registered in Zanzibar 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;

- (vi) if it is identical with or similar to a mark belonging to a different proprietor and already on the Register, or with an earlier filing or priority date, in respect of identical or similar 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;
- (vii) if the application has been made in bad faith or where the sign, if registered, would serve unfair competition purposes.

(3) Notwithstanding the provisions of subsection 2(i) of this section, the Registrar or the Court shall have the authority to decide whether a mark has acquired secondary meaning or distinctiveness through continued use. In that event the mark shall be registrable.

(4) In case of honest concurrent use, or of other special circumstances which in the opinion of the Court or the Registrar make it proper to do so, the Court or the Registrar may permit the registration of marks that are identical or nearly resemble each other in respect of the same goods or services or description of goods or services by more than one proprietor, subject to such conditions and limitations, if any, as the Court or the Registrar, as the case may be, may think it right to impose.

(5) Where separate applications are made by different persons to be registered as proprietors respectively of trade marks that are identical or nearly resemble each other in respect of the same, similar or related goods or services or description of goods or services, the Registrar may refuse to register any of them until their rights have been determined by the Court.

(6) Words or expressions of common use by consumers and technical words or expressions that pertain to the field to which the goods and services belong, shall be deemed as not having distinctive capability for the purposes of subsection (2) (i) of this section.

(7) For the purposes of subsection (2)(v) of this section in determining whether a mark is well known, it shall be taken into account the knowledge of the mark in the relevant sector of the public in Zanzibar, including knowledge which has been obtained as a result of the promotion of the mark.

(8) For the purposes of subsection (2) (vi) of this section in the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.



(9) The prior user of a mark which is not in the Register or which is not subject to a pending application under subsection (2)(vi) of this section may oppose an application for a registration by another person of a similar or identical mark for similar or identical goods, in accordance with section 48 of this Act and the Regulations thereto, provided :

- (i) submits evidence that he has used that mark in good faith for at least six months prior to the filing date or the priority date, if applicable;
- (ii) submits evidence that he has acquired clientele and that clientele attributes some reputation to the mark; and
- (iii) files an application for registration of his own mark prior to sending the Registrar the notice of opposition.

(10) The registration by a third person of a similar or identical mark to one that has lapsed, under section 50(2) of this Act or been abandoned, under section 53(1) of this Act for similar or identical goods or services shall be admitted only after a period of at least three years has passed from the date on which notice of the termination of the mark was published in the Official Gazette, this subsection does not apply to the licensee of the mark that is licensed and abandoned under section 53(1) of this Act.

Application for registration.

47.(1) (a) The application for registration of a mark shall be filed to 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.

(b) When the mark consists of a sign that is not visually perceptible, the application shall contain a graphical reproduction of the mark. Such reproduction shall be specific and may not consist merely of a general description of the sign.

(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 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 Registry with which it was filed, consequently, the filing of that application in Zanzibar before the expiration of the period referred to in subsection.



- (c) shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing or the use of the mark, and such acts cannot give rise to any third-party right or any right of personal possession.
 - (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.
 - (c) The period of priority referred to in this subsection is of six months.
- (3) The applicant may at any time withdraw his application or restrict the goods or services covered by the application.

Examination,
opposition,
registration of
mark protection in
Zanzibar of mark
registered in other
members of the
Paris Union and
the WTO.

- 48.(1)(a) The Registrar shall examine whether the application complies with the requirements of section 47(1) of this Act and the Regulations pertaining thereto.
- (b) The Registrar shall examine and determine whether the mark is a mark as defined in section 2 and is registrable under section 46(2) (i) to (vi) of this Act.
- (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 sections 2 and 46(2) of this Act and the Regulations pertaining thereto are not fulfilled.
 - (c) The Registrar shall publish a notice of the opposition in the Official Gazette, and, within the period of sixty days 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.



(3) Where the Registrar finds that the conditions referred to in subsection (1) of this section 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 favour,

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

- (4) (a) Every mark duly registered in the territory or country of origin that is a Member of the Paris Union or of the World Trade Organization or that maintains a relation of reciprocity with Zanzibar in this regard ("the country of origin"), shall be accepted for filing and protected in Zanzibar, subject to the reservations indicated in this subsection, the Registrar shall, before proceeding to final registration, require the production of a certificate of registration in the country of origin, issued by the competent authority, no authentication shall be required for this certificate.
- (b) Shall be considered the country of origin the country of the Union or the Member of the World Trade Organization where the applicant has a real and effective industrial or commercial establishment, or, if he has no such establishment within the Union or in the territory of a World Trade Organization Member, the country where he has his domicile, or, if he has no domicile within the Union or in a territory of a World Trade Organization member but is a national of a country of the Union or of a World Trade Organization Member, the country of which he is a national.
- (c) Trademarks covered by this subsection may be neither denied registration nor invalidated except in the following cases:
 - (i) when they are of such a nature as to infringe rights acquired by third parties in Zanzibar;
 - (ii) when they are devoid of any distinctive character, or consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, place of origin, of the goods, or the time of production, or have become customary in the current language or in the bona fide and established practices of the trade of the country where protection is claimed;



- (iii) when they are contrary to morality or public order and, in particular, of such a nature as to deceive the public, it is understood that a mark may not be considered contrary to public order for the sole reason that it does not conform to a provision of this Part, except if such provision itself relates to public order.
- (d) The provisions of paragraph (c) of this subsection are subject, however, to the application of provisions of Part III;
- (e) In determining whether a mark is eligible for protection, all the factual circumstances must be taken into consideration, particularly the length of time the mark has been in use;
- (f) The Registrar shall not refuse the registration of a mark under this subsection for the sole reason that it differs from the mark protected in the country of origin only in respect of elements that do not alter its distinctive character and do not affect its identity in the form in which it has been registered in the said country of origin;
- (g) No person may benefit from the provisions of this subsection if the mark for which he claims protection is not registered in the country of origin.
- (h) The benefit of priority shall remain unaffected for applications for the registration of marks filed within the period fixed by section 47(2)(c) of this Act, even if registration in the country of origin is effected after the expiration of such period.

Rights conferred
by Registration
Duration,
Renewal.

49.(1) The owner of a registered mark shall have the exclusive right to prevent all third parties from using in the course of trade identical or similar signs for goods or services identical or similar to those in respect of which the mark is registered, where such use would result in a likelihood of confusion, without prejudice to the provisions of subsections (3), (4) and (5) of this section.

(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 consent, 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, in applying the provisions concerning the barring of registration by other persons or the enforcement of rights, it shall be understood that the fundamental purpose of protection of marks is the protection of consumers against deceit, either voluntary or involuntary.



(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 Zanzibar by the registered owner or with his consent, and therefore shall be exhausted.

(4) 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 any territory or country by the registered owner or with his consent, and therefore shall be exhausted.

(a) Without prejudice to the provisions of subsection (3) of this section, the Minister shall have the authority, on his own or at the request of any interested party, of declaring the trademark rights exhausted and thus of authorizing others to import the product identified by or bearing a registered or otherwise protected trademark ("the product") from another territory when that product is not available in the territory of Zanzibar or is available in the territory of Zanzibar with unreasonably low quality standards or in a quantity that is not sufficient to meet the local demand or at prices that the Minister deems abusive or for any other reason of public interest, including anticompetitive practices, provided that:

(i) the product has been put in the channels of commerce in the territory from which it will be imported by the owner of the trademark or with his consent; and

(ii)(a) similar or identical trademark is registered or otherwise protected in the territory from which the product will be imported and is owned by the same person who owns the registered or otherwise protected trademark in Zanzibar or by a person under his control.

(b) if the importer fails to fulfill the purpose that justified the Minister's decision to consider the trademark rights exhausted, the Minister shall, on his own, or at the request of the trademark owner, cancel the authorization issued.

(c) if the conditions that gave rise to the Minister's decision to consider the trademark rights exhausted cease to exist, the Minister may, on his own or at the request of the trademark owner, cancel the authorization, provided that the legitimate interests of the importer are taken into account, including but not exclusively that the importer will retain the right to commercialize the products that remain on stock.

(5) The provisions of subsection (1) of this section shall not apply to the use of the registered mark by a third person with informative purposes, such as to promote sales or engage in comparative advertisement, provided such use is not made in a manner that deceives the public or constitutes unfair competition, under this Act.



(6) The Minister of Health may take measures to limit the use of marks with the purpose of facilitating the prescription of and the access to generic pharmaceutical products and medical devices, or with the purpose of discouraging the public consumption of goods that are deemed prejudicial to health provided such measures do not unreasonably cause a detriment to the capability of the marks in question to distinguish goods of one undertaking from those of other undertaking.

(7) (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 seven 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, otherwise the registered mark shall lapse, shall be no restoration of lapsed registered marks.

Invalidation,
removal on
grounds of
non-use.

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

(b) The request of invalidation can be filed within a period of five years from the date of issuance of the registration certificate, unless the registration was obtained in bad faith or in violation of section 46(2) (vii) of this Act in which cases the request can be filed without any time limits.

(c) The Court shall invalidate the registration if the person requesting the invalidation proves that any of the requirements of sections 2 and 46 is not fulfilled, or the provisions of sections 66 and 67 of this Act are not complied with.

(d) 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, such as import restrictions or other government or market impediments to commercialization, and that there was no intention not to use or to abandon the same in respect of those goods or services.



Collective marks. 51.(1)(a) Subject to subsections (2) and (3), sections 46 to 50 shall apply to collective marks.

(b) It shall not be required that the applicant of the registration of a collective mark possesses an industrial or commercial establishment anywhere in a Member of the Paris Union or a Member of the World Trade Organization.

(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 Rules, if any, governing the use of the collective mark.

(b) Any changes made in respect of the Rules referred to in paragraph (a) shall be communicated to the Registrar.

Certification marks. 52.(1) Subject to sections 53 and 54 of this Act the provisions of sections 46 to 50 shall apply to certification signs, the application for the registration of a certification sign must designate the sign as a certification sign and shall be accompanied by the Rules governing its use, these provisions apply to all certification signs, including those that are owned by governmental agencies.

(2) The owner of a certification sign may not use the sign to identify or certify his own goods or services.

(3) In addition to the grounds provided in section 50(1) (b) of this Act, the Court shall invalidate the registration of a certification sign if the person requesting the invalidation proves that the owner of the certification sign uses it, or that he permits its use in contravention of the Rules referred to in subsection (1) or that he 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, any interested person can file a request for invalidating certification signs, including, but not limited to, the Registrar, the Public Prosecutor, the competitors of the owner, the producers of the certified goods or services, as well as associations and organizations that legitimately represent the consumers concerned.

Special provisions on licensing and assignment. 53.(1) (a) Any license contract concerning the registration of a mark, or an application therefore, 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, where such control is appropriate or necessary, 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, and the Court may declare



the mark as abandoned by its owner, abandonment may be alleged as a personal defense in infringement proceedings.

- (b) The abandonment of a mark shall be deemed to have been effective as of the date on which the license contract has become effective, and it shall be recorded and a reference thereto published in the Official Gazette in accordance with the Regulations.

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

(3) The owner of a registered mark shall have the right to assign it without the transfer of the business to which the mark belongs, this provision shall not apply to certification signs.

54. Any person who has proved to comply with the technical standards and other conditions of the Rules mentioned in section 52(1) of this Act, shall not be refused the right to use the certification sign in the same conditions established by those Rules.

55.(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.

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

(b) Any subsequent use of the trade name in particular made 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.

CHAPTER II GEOGRAPHICAL INDICATIONS

56. For the purpose of this Chapter:

- (a) "Good" means any natural or agricultural product or any product of handicraft or industry; and
- (b) "Producer" means:
- (i) any producer of agricultural products or any other person exploiting natural products; and



(ii) any manufacturer of products of handicraft, or industry.

Civil proceedings. 57. Subject to the provisions of this Act, any interested person and any interested group of producers or consumers may institute proceedings in the Court to prevent, in respect of geographical indications,

- (a) the use of any means in the designation or presentation of a goods that indicates or suggests that the goods in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;
- (b) any use which constitutes an act of unfair competition within the meaning of Article 10 of the Paris Convention; or
- (c) use of a geographical indication identifying any goods not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

Availability of protection regardless of registration and presumption.

58. Protection under this Act shall be available:

- (a) regardless of whether a geographical indication has been registered provided, however, that registration of a geographical indication according to section 63 of this Act shall, in any proceedings under this Act, raise a presumption that such indication is a geographical indication within the meaning of section 2 of this Act; and
- (b) against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

Exclusion from protection.

59. The following shall not be protected as geographical indications:

- (a) indications which do not correspond to the definition in section 2 of this Act;
- (b) indications which are contrary to public order or morality;
- (c) geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country;



- (d) indications with respect to goods that are identical with the term customary in common language as the common name for such goods in Zanzibar.

Application for registration, and right to file application.

60.(1) The application for registration of a geographical indication shall be filed to the Registrar.

(2) The following shall have the right to file an application:

- (a) natural persons or legal entities carrying on an activity as a producer in the geographical area specified in the application, with respect to the goods specified in the application, as well as groups of such persons;
- (b) any competent authority.

(3) The Registrar may, on his own or per request of any of the persons designated in subsection 2(a) of this section, file for, obtain and enforce the registration of the geographical indications with respect to goods where the producers of those goods are not formally organized or associated and therefore may not apply for, obtain and enforce the registration of the geographical indications, in such an event, those geographical indications are governed by the other provisions of this Act except for the competence for seeking their registration and protection in Zanzibar as well as in other countries, the Registrar shall be the custodian of those geographical indications until he or the Court is satisfied that the persons or entities entitled to own and enforce rights in geographical indications are organized under the applicable laws or regulations.

Contents of application.

61. The application shall specify:

- (a) the name, address, nationality of the natural person or legal entity filing the application, and the capacity in which the applicant is applying for registration;
- (b) the geographical indication for which registration is sought;
- (c) the geographical area to which the geographical indication applies;
- (d) the goods for which the geographical indication applies;
- (e) the quality, reputation or other characteristic of the goods for which the geographical indication is used; and shall be subject to the payment of the prescribed fee.



Examination,
opposition,
registration of
the geographical
indication.

62.(1) The Registrar shall examine whether the application complies with the requirements of sections 2, 59, 60(2) and 61 of this Act and the Regulations pertaining thereto.

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

(b) Any interested person or competent authority may, within the prescribed period and in the prescribed manner, give notice to the Registrar of Opposition to the registration of the geographical indication on the grounds that one or more of the requirements of sections 2, 59, 60(2) and 61 of this Act are not fulfilled;

(c) The Registrar shall publish a notice of the opposition in the Official Gazette, and within the period of ninety days 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 geographical indication should be registered.

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

(a) the registration of the geographical indication has not been opposed within the prescribed time limit; or

(b) the registration of the geographical indication has been opposed and the opposition has been decided in the applicant's favour, he shall register the geographical indication, publish a reference to the registration and issue to the applicant a certificate of registration, otherwise, he shall refuse the application.

Right of use.

63. Only producers carrying on their activity in the geographical area specified in the Register shall have the right to use a registered geographical indication, in the course of trade, with respect to the products specified in the Register, provided that such products possess the quality, reputation or other characteristic specified in the Register.



Invalidation and
rectification of
registration.

64.(1) Any interested person or competent authority may request the Court to order:

- (a) the invalidation of a registration of a geographical indication on the ground that it does not qualify for protection as such having regard to sections 2, 59, 60(2) and 61 of this Act;
- (b) the rectification of a registration of a geographical indication on the ground that the geographical area specified in the registration does not correspond to the geographical indication, or that the indication of the products for which the geographical indication is used or the indication of the quality, reputation or other characteristic of such products is missing or unsatisfactory.

(2) In any proceedings under this section, notice of the request for invalidation or rectification:

- (a) shall be served to the person who filed the application for registration of the geographical indication or his successor in title; and
- (b) shall, by a publication in the Official Gazette be given to all persons having the right to use the geographical indication under section 63 of this Act.

(3) The persons referred to in subsection (2) of this section and any other interested person may, within a period which shall be specified by the Court in the said notice, apply to join in the proceedings.

Misleading
marks.

65. The Court shall, in its own motion or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in Zanzibar is of such a nature as to mislead the public as to the true place of origin.

Exceptions
regarding
prior users.

66. Nothing in this Act shall prevent continued and similar use in Zanzibar of a particular geographical indication of another country in connection with goods or services by any national or domiciliary of Zanzibar who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of Zanzibar either:

- (a) for at least ten years preceding April 15, 1994; or
- (b) in good faith preceding that date.



(2) Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

- (a) before January 1, 2006; or
- (b) before the geographical indication is protected in its country of origin, this Act shall not prejudice the registrability of or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

(3) Nothing in this Act shall apply in respect of a geographical indication of any country with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in Zanzibar or in respect of a geographical indication of any other country with respect to products for which the relevant indication is identical with the customary name existing in Zanzibar as of January 1, 1995.

(4) Any request for relief made under this Act in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in Zanzibar or after the date of registration of the trademark in Zanzibar, provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in Zanzibar and provided that the geographical indication is not used or registered in bad faith.

(5) This Act shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

CHAPTER III PROTECTION AGAINST UNFAIR COMPETITION

67. (1) (a) In addition to the acts and practices referred to in sections 69 to 73 of this Act any act or practice, in the course of industrial or commercial activities, that is contrary to honest practices shall constitute an act of unfair competition.
- (b) An act or practice that is contrary to honest practices, for the purposes of this Act, shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

General
principles.



- (c) An act or practice that is contrary to honest practices, for the purposes of this Act, shall also mean acts of breach of legal duties in general when their purpose or their consequence is to obtain illicit advantages over competitors, such as the breach of environmental or labour law.
- (d) Any natural person or legal entity damaged or likely to be damaged by an act of unfair competition shall be entitled to the remedies referred to in this Act.

(2) The provisions of this Act shall apply independently with any legislative provisions protecting inventions, utility models, industrial designs, layout-designs, distinctive signs, literary and artistic works and other intellectual property subject matter.

Causing confusion with respect to another's enterprise or its activities.

68. (1) Any act or practice, in the course of industrial or commercial activities, that causes, or is likely to cause, confusion with respect to another's enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

(2) Confusion may, in particular, be caused with respect to

- (i) a trademark, whether registered or not;
- (ii) a trade name;
- (iii) a business identifier other than a trademark or trade name;
- (iv) the appearance of a product;
- (v) the presentation of products or services;
- (vi) a celebrity or a well-known fictional character.

Damaging another's goodwill or reputation.

69. (1) Any act or practice, in the course of industrial or commercial activities, that damages, or is likely to damage, the goodwill or reputation of another's enterprise shall constitute an act of unfair competition, regardless of whether such act or practice causes confusion.

(2)(a) Damaging another's goodwill or reputation may, in particular, result from the dilution of the goodwill or reputation attached to-

- (i) a trademark, whether registered or not;



- (ii) a trade name;
 - (iii) a business identifier other than a trademark or a trade name;
 - (iv) the appearance of a product;
 - (v) the presentation of products or services;
 - (vi) a celebrity or a well-known fictional character.
- (b) For the purposes of these provisions, "dilution of goodwill or reputation" means the lessening of the distinctive character or advertising value of a trademark, trade name or other business identifier, the appearance of a product or the presentation of products or services or of a celebrity or well-known fictional character.

Misleading the Public.

70. (1) Any act or practice, in the course of industrial or commercial activities, that misleads or is likely to mislead the public with respect to an enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

(2) Misleading may arise out of advertising or promotion and may, in particular, occur with respect to

- (i) the manufacturing process of a product;
- (ii) the suitability of a product or service for a particular purpose;
- (iii) the quality or quantity or other characteristics of products or services;
- (iv) the geographical origin of products or services;
- (v) the conditions on which products or services are offered or provided;
- (vi) the price of products or services or the manner in which it is calculated.

Discrediting another's enterprise or its activities.

71.(1) Any false or unjustifiable allegation, in the course of industrial or commercial activities, that discredits, or is likely to discredit, another's enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.



(2) Discrediting may arise out of advertising or promotion and may, in particular, occur with respect to:

- (i) the manufacturing process of a product;
- (ii) the suitability of a product or service for a particular purpose;
- (iii) the quality or quantity or other characteristics of products or services;
- (iv) the conditions on which products or services are offered or provided;
- (v) the price of products or services or the manner in which it is calculated.

Unfair
competition
in respect of
secret
information.

72.(1) Any act or practice, in the course of industrial or commercial activities, that results in the disclosure, acquisition or use by others of secret information without the consent of the person lawfully in control of that information (hereinafter referred to as "the rightful holder") and in a manner contrary to honest commercial practices shall constitute an act of unfair competition.

(2) Disclosure, acquisition or use of secret information by others without the consent of the rightful holder may, in particular, result from:

- (i) industrial or commercial espionage;
- (ii) breach of contract;
- (iii) breach of confidence;
- (iv) inducement to commit any of the acts referred to in items(i) to (iii);
- (v) acquisition of secret information by a third party who knew, or was grossly negligent in failing to know, that an act referred to in items (i) to (iv) was involved in the acquisition.

(3) For the purposes of this Article, information shall be considered "secret information" if:

- (i) it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- (ii) it has commercial value because it is secret; and



- (iii) it has been subject to reasonable steps under the circumstances by the rightful holder to keep it secret.
- (4) Any act or practice, in the course of industrial or commercial activities, shall be considered an act of unfair competition if it consists or results in.
- (i) an unfair commercial use of secret test or other data, the origination of which involves considerable effort and which have been submitted to a competent authority for the purposes of obtaining approval of the marketing of pharmaceutical or agricultural chemical products which utilize new chemical entities, or
 - (ii) the disclosure of such data, except where necessary to protect the public or unless steps are taken to ensure that the data are protected against unfair commercial use.
- (5)(a) Subsection (4)(i) shall be construed as precluding any person other than the person who submitted undisclosed test data or other data, the origination of which involves a considerable effort, from relying on or referring to such data in support of an application submitted by a person (the first registrant) for marketing approval for a reasonable period of time after the submission of those tests or data and the period shall be determined by the competent authority for each product the marketing of which it has approved, taking account of the nature of the data and the first registrant's efforts and expenditure in producing the tests for each product.
- (b) For the purposes of paragraph (a), the reasonable period shall be of a maximum of five years for all products from the date of approval, the authority that is competent to approve the marketing of the product in question will determine the period of protection for each product taking into account the nature of the data and the efforts in producing those data, in considering those efforts, the authority shall take into consideration all aspects, including but not limited to, the financial costs, the labor and time required for producing the data that supported the first registration of the product in question in any country or territory that is a Member of the Paris Convention or the World Trade Organization or, if reciprocal treatment is recognized to the citizens and residents of Zanzibar, in any other country.
- (c) Provided the applicant pays the first registrant an adequate compensation, the amount of which will be agreed by the subsequent applicant and the first registrant or, if the parties do not reach an agreement, by the marketing approval granting authority, notwithstanding the provisions of paragraph (b), during the aforementioned periods the competent authority may rely



on those undisclosed test data and other data that were submitted by the first registrant for approving the subsequent application:

- (i) when obtaining those undisclosed test data and other data has caused the suffering of humans and animals; or
 - (ii) in cases of extreme urgency; or
 - (iii) if the product to which the protected undisclosed test data and other data relate to was not commercialized in Zanzibar within a reasonable period after its commercialization was approved in Zanzibar; or
 - (iv) when the protected undisclosed test data and other data are necessary for the marketing approval of a product that has been the subject of a compulsory license under section 15 of this Act provided that the adequate remuneration of the compulsory license of the patent also takes into account the economic value of the undisclosed test data or other data on which the authority will rely for granting the marketing approval to the product manufactured under the license.
- (d) The granting of marketing approval by the competent authority for products the commercialization of which depends on such an approval shall not take into account the existence or the validity of intellectual property rights in the product in question and it shall not be invoked as a personal defense or an immunity against liability in lawsuits in respect of intellectual property rights infringement.
- (e) The provisions of paragraph (a) shall not prevent a subsequent applicant from relying on test data and other data that have been submitted by a prior applicant provided they have been obtained from publicly accessible sources, regardless of the prior applicant having given his consent, and provided the tests and data submitted by the subsequent applicant are sufficient for proving compliance with legal requirements necessary for obtaining marketing approval, this provision shall not apply where the data were obtained by the subsequent applicant in a manner that is considered an act of unfair competition in Zanzibar.
- (f) For the purposes of subsection (4) of this section, chemical entities shall be considered new when they have not been granted market approval or otherwise marketed in any territory in the world within the period of eighteen months from the date of the first granting of marketing approval or the first marketing anywhere in the world, undisclosed test data and other data concerning products the main characteristic of which is a new



indication, a new use, a new dosage or a new formulation and that do not contain a new chemical entity but are nevertheless subject to marketing approval shall be protected against disclosure only.

(g) The provisions of this section shall not apply to undisclosed test data and other data:

(i) when the use made of those data is not unfair in nature or has not a commercial nature, including, but not limited to, its use by selected institutions, such as universities or research facilities, that may be charged by governmental authorities of verifying and testing the product, even after the marketing approval is granted, provided those authorities ensure that confidentiality over the data shall be preserved;

(ii) when the authorities in charge of granting marketing approval rely on those data with the exclusive purpose of anticipating the granting of marketing approval in the Zanzibar, provided the subsequent applicant gives assurance that it will not seek to commercialize the product in Zanzibar before the terms established in paragraph (a) of this subsection expire;

(iii) when reliance on those data by the authorities in charge of granting marketing approval has the exclusive purpose of granting marketing approval for exporting the product to other countries, and provided the subsequent applicant party gives assurance that it will not seek to commercialize the product in Zanzibar before the terms established in paragraph (a) of this subsection expire.

(h) Undisclosed test data and other data relating to pharmaceutical products shall be protected in Zanzibar, in accordance with paragraphs (a) to (g) of this subsection, after January 1, 2016 or such period of extension agreed upon by the World Trade Organization Council for TRIPs, this paragraph shall apply to marketing approval requests that will be pending on that date as well as to those filed on or after that date.

(6) Subsection 4(ii) of this section shall apply until the first registrant loses control in any manner over the undisclosed data and consequently it is made publicly available anywhere in the world.



**PART IV
ENFORCEMENT OF INDUSTRIAL PROPERTY RIGHTS**

**CHAPTER I
INFRINGEMENT PROCEEDINGS**

Infringement of patents and utility models and remedies.

73.(1) Subject to sections 12, 14, 23 and 25 of this Act an infringement of a patent or a utility model shall consist of the performance of any act referred to in section 12(2) of this Act in Zanzibar by a person other than the owner of the patent and without the agreement of the latter.

(2) On the request of the owner of the patent or of the utility model, or of an exclusive licensee, or of a compulsory licensee, or of a non-exclusive 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 within ninety days, the Court may grant an injunction to prevent infringement and, where the infringer acted knowingly or with reasonable grounds to know, award damages and grant any other remedy provided for in this Act.

(3) An appeal against the grant of a compulsory licence shall not stay or suspend the use of the patented invention or of the utility model during the appeal process, the patent holder's sole remedy shall be action for the recovery of remuneration.

(4) The remedies provided for in this Part shall be also available, whenever appropriate, to the owner of foreign patents that have been the subject of a compulsory license for the purposes of supplying the market of Zanzibar of pharmaceutical products, under the scheme established by the Decision of the World Trade Organization General Council of August 30, 2003, in order to prevent or remedy deviation of the goods in question, when the foreign patents mentioned in this subsection resulted from applications that were filed in the country where the compulsory license was granted subsequent to the entry into force of this Act or that were entitled to claim priority in Zanzibar on that same date, only those applications that are filed in Zanzibar in accordance with section 10(7) of this Act can benefit from the remedies provided for this Part.

(5) Provisional or definitive injunctions established in section 83 shall not be issued, without prejudice to the payment of damages, when:

- (a) 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, the plaintiff or a person with his authorization is not, or has not taken serious preparations for, or has no serious intention to start, commercially exploiting the invention in a manner that meets the demands of the market as to quantity, or at any time if the invention is exploited in a manner that does not meet the demands of the market as to quality;



- (b) the injunction causes serious harm to the public interest;
- (c) the patented products or the products manufactured by a patented process are sold by the plaintiff or by a third party with the plaintiff's consent at prices that are deemed excessive taking into account the average purchase power of consumers and the specific nature of the needs the products aim at meeting, and there is no competing product on the market;
- (d) the patent was obtained in violation of the provisions of section 6(3) (b); in this event, the Court shall dismiss the action without prejudice, at any time after ensuring compliance with section 6(3) (b) of this Act, the patent holder may initiate proceedings on grounds of infringement, under this section. no remedies, however, shall be available to him concerning any acts done by third parties before the patent holder ensured compliance with section 6(3) (b) of this Act.

(6) The rights arising from patents for pharmaceutical processes shall not be enforceable until January 1, 2016 or such period of extension agreed upon by the World Trade Organization Council for TRIPs, if alternative processes for making pharmaceutical products that are not subject to exclusive rights are not available and therefore those patents, if enforced, indirectly give rise to market exclusivity of the pharmaceutical products in question.

Infringement of marks, collective marks and certification signs and remedies.

74.(1) Subject to section 49(3) of this Act, an infringement of a registered mark, or a registered collective mark, or a registered certification sign, or of an unregistered well-known mark, shall consist of the performance of any act referred to in section 49(1) of this Act in Zanzibar by a person other than the owner of the mark and without the agreement of the latter.

(2) An infringement of a registered well-known mark shall consist of the use of a sign identical with or confusingly similar to the well-known mark without the consent of the owner of the well-known mark provided that the sign is used:

- (i) in relation to goods or services identical with or similar to the goods or services for which the well-known mark has been registered, or
- (ii) in relation to goods or services which are not identical with or similar to those in respect of which the well-known mark has been registered provided that the use of the sign 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.



(3) An infringement of an unregistered well-known mark shall consist of the use of a sign identical with or confusingly similar to the well-known mark without the consent of the owner of the well-known mark provided that the sign is used in relation to goods or services identical with or similar to the goods or services for which the mark is well-known.

(4) On the request of the owner of a registered mark or of an exclusive licensee, or of a non-exclusive licensee if he has requested the owner of the mark to institute court proceedings for a specific relief and the owner of the mark has refused or failed to do so within sixty-days, the Court may grant an injunction to prevent infringement, or an imminent infringement, award damages and grant any other remedy provided for in the general law or under this Part.

(5) The Court may also, on the request of any competent authority or any interested person, group association or syndicate, including producers, manufacturers or traders, grant the same relief where it is satisfied that an act of infringement referred to in section 49 of this Act, has been committed or is imminent.

(6) The owner of an unregistered well-known mark shall be entitled to an injunction to prevent infringement or imminent infringement as well as adequate damages.

Infringement of industrial designs and remedies.

75.(1) An infringement of an industrial design registered under this Act shall consist of the performance of any act referred to in section 34(2) of this Act by a person other than the owner of the industrial design and without his consent.

(2) On the request of the owner of the industrial design, or of an exclusive licensee, or of a non-exclusive 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 within sixty days, the Court may grant an injunction to prevent infringement or an imminent infringement, award damages and grant any other remedy provided for in the general law or under this Part.

Infringement of the geographical indications.

76.(1) An infringement of a geographical indication protected under this Act shall consist of the performance of any act referred to in section 63 of this Act or any use of a geographical indication by a person who has no right to use the geographical indication in accordance with this Act.

(2) On the request of any interested person or of any interested group of producers or consumers, or any competent authority under section 60 of this Act, the Court may grant an injunction to prevent the unlawful use of the geographical indication, award damages or grant any other remedy provided for in the general law or under this Part.



Infringement of
layout designs.

77.(1) An infringement of a layout-design (topography) of an integrated circuit protected under this Act shall consist of the performance of any act referred to in section 40(1) by a person other than the owner of the layout-design (topography) and without his agreement.

(2) On the request of the owner of the layout-design (topography) of an integrated circuit, or of an exclusive licensee, or of a compulsory licensee, or of a non-exclusive 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 within sixty days, the Court may grant an injunction to prevent infringement or an imminent infringement, award damages and grant any other remedy provided for in the general law or under this Part.

Acts of unfair
competition.

78.(1) The provisions of this Part shall apply to prevent or to remedy any act of unfair competition subject to the provisions of sections 57(b), 67 to 72 and 116(c) of this Act.

(2) Where an act under sections 72(4) and (5) of this Act, is considered by the Court to constitute an act of unfair competition, the Court shall order:

- (a) the government authority to cancel the marketing approval;
- (b) the competitor of the undisclosed data holder not to market or to cease to market the products the registration of which has constituted an act of unfair competition because it was based on an authorized reliance of protected undisclosed test data or other data;
- (c) the government authority to pay adequate damages for the unauthorized disclosure of the data;
- (d) the competitor of the undisclosed data holder to pay adequate damages for the marketing of the products the registration of which has constituted an act of unfair competition.

Infringement of
copyright and
related rights.

79. The provisions of this part shall apply to any infringement of a copyright or related right, subject to the provisions of the Copyright Act, No. 14 of 2003 and amendment thereto.

Time Limits.

80. Civil proceedings under sections 73 to 79 of this Act, can be initiated within five years from the date on which the right holder knew or had reasons to know the infringing acts, except in case of infringing use of distinctive signs in bad faith or for unfair competition purposes, for which there will be no time limits to initiate the proceedings.



Cumulative
remedies.

81. When it is found that an infringement of any intellectual property right protected by this Act has taken place, Courts shall order injunctions so that the infringer ceases, provisionally or definitively, to infringe, and the payment of damages, and any other remedies available, in accordance with this Act as well as general procedural law.

CHAPTER II PROVISIONAL MEASURES

Provisional
measures.

82. (1) The Court shall order, in accordance with the procedure prescribed in the Civil Procedure Decree, Cap. 8 and Regulations of implementing this Act, prompt and effective provisional measures to prevent an infringement or unlawful use referred to in Chapter I of this Part from occurring or to preserve relevant evidence in regard to an alleged infringement.

(2) Where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed, the Court shall order provisional measures without giving the other party an opportunity of being heard provided that the applicant has furnished:

- (i) any reasonably available evidence satisfying the Court with a sufficient degree of certainty that the applicant is the right holder and that the applicant's rights are being infringed or that such infringement is imminent, and
- (ii) any security or equivalent assurance required by the Court to protect the defendant and to prevent abuse.

(3) Where provisional measures have been ordered without having given the other party an opportunity of being heard, the Court shall give the parties affected notice of the decision, at the latest after the execution of the measures.

(4) Where provisional measures have been ordered under subsections (2) and (3) of this section, the defendant may file a request for review with 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 the Court within two weeks from the notification of the decision, in the review proceedings, the Court shall give the parties concerned an opportunity of being heard and shall confirm, modify or revoke the decision within a reasonable period after the notification of the decision.

(5) Where the applicant does not initiate court proceedings leading to a decision on the merits of the case within 20 working days or 31 calendar days, whichever is the longer, from the notification of the decision ordering provisional measures or within any other reasonable period determined by the Court in the decision, the Court shall revoke the provisional measures upon the request of the defendant.



(6) Where the provisional measures are revoked or where the Court decides on the merits of the case in proceedings under subsection (5) of this section initiated by the applicant that there has been no infringement or threat of an infringement, the Court shall order the applicant, upon the request of the defendant, to provide the defendant appropriate compensation for any injury caused by the execution of the provisional measures.

(7) The measures of this section aiming at preserving relevant evidence shall also be available before the granting of the pending registration, if the Court so deems necessary, in that event, the applicant shall initiate Court proceedings leading to a decision on the merits of the case 20 working days or 31 calendar days, whichever is the longer, from the publication of the grant of the pending registration.

CHAPTER III EVIDENCE AND BURDEN OF PROOF

Evidence and
reversal of burden
of proof.

83. (1) The Court may, where a party has presented reasonably available evidence sufficient to support the claims and has specified evidence relevant to substantiation of the claims which lies in the control of the opposing party, order that this evidence be produced by the opposing party, subject, in appropriate cases, to conditions which ensure the protection of confidential information.

(2) In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, the Court may make preliminary and final determinations, affirmative or negative, on the basis of the information presented to it, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

(3)(a) For the purposes of civil proceedings in respect of the infringement of rights of the patent owner, if the subject matter of a patent is a process for obtaining a product, the Court may order the defendant to prove

that the process used to obtain an identical product is different from the patented process.

(b) Any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.



- (c) In requiring the production of evidence, the Court before which the proceedings referred to in subsection (3)(a) of this section take place, shall take into account the legitimate interests of the alleged infringer in not disclosing his manufacturing and business secrets.

CHAPTER IV DAMAGES AND OTHER REMEDIES

Damages.

84.(1) Where damages are awarded in accordance with sections 73 to 79 of this Act, the Court shall order the infringer to pay the right holder adequate compensation for the infringement of his intellectual property right provided that the infringer acted knowingly or with reasonable grounds to know of the infringement, where appropriate, the Court shall order the infringer to pay the right holder expenses which may include appropriate attorney's fees.

(2) The Court may order the infringer to pay for damages relating to acts of infringement practiced:

- (i) on the date or subsequent to the date on which public notice, if any, of the application of the registration was given through the Official Gazette or;
- (ii) on the date or subsequent to the date on which the applicant of the registration gave notice to the alleged infringer of the contents of the application; or
- (iii) on the date or subsequent to the date on which the alleged infringer acquired knowledge of the contents of the application.

(3) The request for the Court to order the payment of damages under subsection (2) may be filed only after the title of industrial property right in question is granted.

(4) The provisions of subsection (2) of this section, shall apply to those applications to which section 10(8) of this Act refers only after January 1, 2016.

Other remedies.

85.(1) Where goods have been found to be infringing the laws, the Court shall, wherever this is considered adequate under the circumstances to create an effective deterrent to further infringement, taking due account of the need for proportionality between the seriousness of the infringement and the remedies as well as the legitimate interest of third parties, order, without compensation of any sort, that these goods be destroyed, or be disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder.

(2) In respect of counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.



(3) The Court shall also, wherever considered adequate, taking into account the conditions set out in subsection (1) of this section, order that materials or implements the predominant use of which has been the creation of infringed goods be disposed of outside the channels of commerce without compensation of any sort in such a manner as to minimize the risks of further infringement.

Information to
right holder.

86. The Court may order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or rendering of services and of their channels of distribution, where this would be in proportion to the seriousness of the infringement.

Insemination
of defendant.

87.(1) The Court shall order an applicant at whose request measures were taken and who has abused enforcement procedures to provide to a defendant wrongfully enjoined or restrained adequate compensation for the injury suffered by virtue of such abuse.

(2) Where it is considered adequate in view of the seriousness of the abuse, the Court shall also order the person having abused enforcement procedures to pay the other party expenses including appropriate attorney's fees.

Appeals.

88.(1) Any decision by the Court in infringement proceedings shall be subject to an appeal to the Court of Appeal.

(2) The appeal shall be filed according to the Court of Appeal procedure.

Further sanctions.

89. When a person has been found guilty of an offence under the provisions of the intellectual property laws referred to in sections 73 to 79 of this Act, the Court shall, whenever this is considered adequate under the circumstances to create an effective deterrent to further infringement, order the seizure, forfeiture or destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence.

CHAPTER V BORDER MEASURES

Definitions.

90. For the purpose of this Chapter, "counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under this Act in Zanzibar, and "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under this Act in Zanzibar.



Suspension on
own initiative or
on request
invitation to file
application..

91. (1) The Customs Department shall, upon the request of the right holder or upon its own initiative, suspend the customs clearance procedures and release into free circulation of goods if there is sufficient prima facie evidence that the importation of counterfeit trademark goods or pirated copyright goods is taking place or is imminent.

(2) Where the release into free circulation was suspended on its own initiative, the Customs Department shall notify the right holder and give him an opportunity to file an application for the suspension of release into free circulation and to provide a security in accordance with section 101 of this Act and to inform him that, if the required security has not been provided within five working days from receipt of the notification, the goods will be released into free circulation.

(3) Where the Customs Department is requested by the right holder to take action under subsection (1) of this section, sections 100 to 102 of this Act shall apply mutatis mutandis.

Notification of
importer and
rights holder.

92. Where the Customs Department has suspended customs clearance in accordance with section 91 of this Act, it shall notify the importer and, where known, the right holder of the alleged infringement and of the suspension.

Inspection and
examination of
goods.

93. Without prejudice to the protection of confidential information, the Customs Department shall allow the right holder and the importer to examine the goods the clearance of which has been suspended, and to remove samples for examination, testing and analysis, in order to substantiate their respective claims.

Information to
right holder,
release of goods.

94.(1) Where the customs clearance of goods has been suspended by the Customs Department under section 91 of this Act:

- (a) the Customs Department shall inform the right holder of the names and addresses of the importer, consignor and consignee and of the quantity of the said goods provided that this is in proportion to the seriousness of the infringement; and
- (b) the owner, importer or consignee of the goods shall be entitled to their release on the posting of a security, in an amount sufficient to protect the right holder, where the period set out in section 105 of this Act has expired without the granting of provisional relief by the Court and where all other conditions for importation have been complied with.

(2) Upon request, the Customs Department may also, without prejudice to the protection of confidential information, provide the right holder with copies of documents lodged in respect of such goods or with any information or documents relating to any previous importation of identical or similar goods.



Liability of
Customs
Department.

95. The Customs Department shall not be liable for any action taken or intended in good faith in respect of the release or suspension of release into free circulation of counterfeit, pirated or infringing goods including, in particular,

- (i) any failure to detect such goods, and
- (ii) the inadvertent release of such goods.

Assistance by
right holder.

96. The Customs Department may require the right holder to provide any information that may assist it in exercising its powers under this Act.

Availability of
border measures.

97. (1) Border measures shall, where the conditions set out in this Act are met, be ordered by the Court to prevent the importation of goods which infringe intellectual property rights conferred in Zanzibar by

- (i) marks, collective marks, certification signs and trade names;
- (ii) industrial designs;
- (iii) geographical indications;
- (iv) copyright and related rights protected under Copyright Act, No. 14 of 2003.

(2) Border measures shall also be granted to prevent the importation of goods, the production and or the commercialization of which in Zanzibar is an act of unfair competition, in accordance with this Act.

Application for
suspension.

98. The holder of an intellectual property right, who has valid grounds for suspecting that the importation of goods that infringe his rights may take place, may file an application with the Court requesting it to order the Customs Department to suspend customs clearance of those goods.

Request and
prima facie
evidence.

99. The application shall be presented in writing and shall state the grounds for the request, and shall be accompanied by

- (i) prima facie evidence that the applicant is the holder of the intellectual property right;
- (ii) prima facie evidence that his right has been infringed or that an infringement is imminent;
- (iii) a sufficiently detailed description of the goods alleged to be infringing in order to make them readily recognizable; and
- (iv) the prescribed fee.



Content of application.

100. The applicant shall furnish all information available enabling the Court to make decision, information may include the following:

- (i) the name and address of the importers or consignees of the goods alleged to infringe his intellectual property rights;
- (ii) a sample or photograph of the goods alleged to be infringing, or other means enabling the Customs Department to recognize the said goods;
- (iii) the country or countries of origin or manufacture of the goods alleged to be infringing;
- (iv) the names and addresses of persons or business entities involved in the manufacture and distribution of the goods alleged to be infringing;
- (v) the manner of transportation and the names and addresses of the transporters of the goods alleged to be infringing;
- (vi) the port or ports where it is anticipated that the goods alleged to be infringing will be imported into Zanzibar and presented to the Customs Department;
- (vii) the expected date of importation and presentation to the Customs Department; and
- (viii) a sample of the genuine goods produced by or with the consent of the right holder.

Security.

101.(1) The Court may require the right holder to provide security or other equivalent assurance:

- (i) to cover any liability on his part vis-à-vis persons affected by border measures where the said measures are discontinued by virtue of an act or omission by the right holder or where the goods in question are subsequently found not to be infringing;
- (ii) to ensure payment of the expenditure incurred in keeping the goods in suspension by the Customs Department; and
- (iii) to prevent abuse.

(2) Such security or equivalent assurance shall not unreasonably deter recourse to the procedure suspending release into free circulation of goods.



Procedures.

102. (1) The decision by the Court to suspend the release into free circulation of goods alleged to be infringing goods shall be taken in proceedings under section 82(1) of this Act and may be rendered in accordance with section 82(2) of this Act, without giving the other party opportunity of being heard and in its decision, the Court shall specify the period for which the Customs Department will have to take action.

(2) The Court shall forward its decision granting the application by the right holder without delay to the Customs Department which shall be liable to take action in respect of the goods alleged to be infringing.

Execution of Court Order.

103. The Customs Department shall, upon the order of the Court, suspend the customs clearance procedures and the release into free circulation of goods alleged to infringe intellectual property rights referred to in sections 73 to 83 of this Act.

Compensation for wrongful detention.

104. The Court may order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released by virtue of failure to initiate proceedings leading to a decision on the merits of the case in accordance with section 105 of this Act.

Time limit and release of goods.

105. (1) If, within a period of 10 working days after the applicant has been notified of the suspension of the release into free circulation, no proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant and, where the Customs Department has taken the decision to suspend the release into free circulation of the goods, the Customs Department has not been notified accordingly, the goods shall be released, provided that all other conditions for importation have been complied with.

(2) The Customs Department may, where it considers an extension of the said period to be appropriate under the circumstances, extend the period of suspension by a period not exceeding another 10 working days.

(3) The Court may extend the period by any period it considers reasonable under the circumstances.

Review of decision.

106. (1) If proceedings leading to a decision on the merits of the case have been initiated, the Court or the Customs Department, whichever authority has taken the decision to suspend the release into free circulation of the goods alleged to be infringing, shall review, upon the request of the defendant, the decision with the view to determine whether the measures shall be modified, revoked or confirmed.

(2) Where the suspension of the release of goods is continued in accordance with a provisional measure ordered by the Court, the period of further suspension shall be determined by the Court.



(3) Where no such determination has been made, the said period shall not exceed 20 working days or 31 calendar days, whichever is the longer.

Destruction
of goods.

107. (1) The Court shall, where the conditions set out in section 85(1) of this Act are met, order the destruction of infringing goods or the disposal of them outside the channels of commerce in such a way as to preclude injury to the right holder, without compensation of any sort.

(2) The following shall not be permitted:

- (i) re-exporting the infringing goods in the unaltered state;
- (ii) other than in exceptional cases, simply removing the trademarks which have been affixed to counterfeit goods without authorization; and
- (iii) placing the goods under a different customs procedure.

Deminimis
Imports.

108. Small quantities of goods of a non-commercial nature contained in the traveler's personal luggage or sent in small consignments may be excluded from suspension from release into free circulation.

Goods in transit.

109. The provisions on border measures in this Act shall not apply to goods that are in transit in the territory of Zanzibar.

Appeal against
decisions by
Customs
Department.

110. The aggrieved party may lodge an appeal against any decision or measure taken by the Customs Department on or in connection with the suspension of release into free circulation of goods alleged to be counterfeit or pirated, and that appeal shall lie to the Court and shall be filed within 7 days from the notification of the decision.

Appeals against
Court decisions.

111. The aggrieved party may lodge an appeal against any decisions taken by the Court of first instance on or in connection with the suspension of release into free circulation of counterfeit, pirated or infringing goods, and that appeal may be filed within 30 days from the notification of the decision with the Court of Appeal.

CHAPTER VI CRIMINAL PROCEDURES

Criminal
Procedures.

112. Criminal procedures and penalties, shall be applied in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale and the provisions of this title shall apply to criminal procedures, where appropriate, in particular those that concern seizure, forfeiture and destruction of the infringing goods and of any material and implements the predominant use of which has been the commission of the offense.



PART V GENERAL PROVISIONS

Changes in
ownership
(Assignments)
license
contracts.

113. (1) Any change in the ownership of a patent, or a utility model certificate, or the registration of an industrial design, or the registration of a layout-design, or the registration of a mark or collective mark or certification sign, or the registration of a geographical indication, or in the ownership of an application therefore, 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 affected.

(2) 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.

(3) 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.

(4) Any license contract concerning a patent, or a utility model, or a registered industrial design, or a registered layout-design, or a registered mark, or an application therefore, 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 recording is affected.

(5) The Registrar may refuse to record a contract for the transfer of ownership (assignment) or a license contract when it decides that the contract concerning the right in question is harmful to the economic interest of Zanzibar or imposes unjustified restrictions on either side or contains one or more clauses that are abusive or anti-competitive or in any manner restrain trade or are likely to have any of those effects, the Registrar shall hear the allegations of the parties to the contract, if one or both so request, the parties to the contract may submit evidence that is pertinent and any of the parties or both may appeal from the Registrar's decision to the Court within two months from the date on which the Parties were notified of the Registrar's decision to refuse to record the contract.

(6)(a) For the purposes of subsection (5) of this section, any limitations imposed on the assignee or the licensee that do not derive from the rights conferred by the registration of the licensed right, and that are not necessary for the safeguard of that right, shall be deemed abusive or, in the event that they have anti-competitive effects, anti-competitive.



- (i) notwithstanding the provisions of paragraph (a) of this subsection, the license contracts may provide for the following limitations:
- (ii) limitation of the scope, geographical area and period of use;
- (iii) conditions required for the efficient control of the quality of goods and services, subject to the provisions of section 53 of this Act;
- (iv) obligation for the licensee to refrain from all acts that may cause damage to the reputation of the right owner or to the subject matter of the right.

(7) Where the right that is the subject of an assignment or a license contract is invalidated after the contract becomes effective, the contract will cease immediately to produce effects, and the parties may recover totally or partially any payments or other benefits paid under the contract, unless the party in favor of whom those payments or other benefits were paid has benefited in good faith from the contract and the invalidation does not impair or annul those benefits.

Agents.

114. Where an applicant's ordinary residence or principal place of business is outside Zanzibar, he shall be represented by a legal practitioner resident or certified to practice in Zanzibar.

Establishment
of Industrial
Property Office.

115. (1)(a) There shall be established the Industrial Property Office within the Ministry responsible for Industrial Property.

- (b) The Industrial Property Office shall be entrusted with all functions relating to:
 - (i) the procedure for the grant of patents and the registration of industrial designs, marks and collective marks; patents and Certificates shall be issued by the Registrar without any responsibility of the Government of Zanzibar as to the conditions of registrability and to the right to the titles;
 - (ii) the administration of granted patents and registered industrial designs, marks and collective marks as specified in this Act and the Regulations;
 - (iii) the registration of technology transfer agreements and licenses;
 - (iv) dissemination of industrial property information for technological and economic development and to maintain links with users and potential users of industrial property information;
 - (v) promotion of inventiveness and innovativeness in Zanzibar;



- (vi) performing any other functions for the better carrying out of this Act.
- (2)(a) The Registrar and Deputy Registrar of the Industrial Property office shall be appointed by the President;
- (b) The Assistant Registrars shall be appointed by the Minister and shall superintend and perform all duties required by this Act, and the Regulations and shall have the authority to carry out studies, program 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 and shall be published in the Official Gazette without undue delay.
- (3) A person shall not be eligible to be appointed as a Registrar or Deputy Registrar, unless:
- (a) he is a Zanzibari; and
 - (b) is qualified lawyer.
- (4) The Minister shall determine the organizational structure and regulate all questions concerning the financial and budgetary system of the Industrial Property Registration Office.

Registers,
Official
Gazette or use
of signs of
ownership.

- 116.** (1)(a) The Industrial Property Office shall maintain separate Registers for patents, utility models, industrial designs, layout designs, marks and geographical indications, collective marks and certification signs shall be registered in a special section of the Register of Marks, and all the recordings provided for in this Act shall be effected in the said Registers.
- (b) The Registers may be consulted, during working hours, by any person, and any person may obtain extracts therefrom, under the conditions prescribed in the Regulations.
 - (c) The Registers shall be prima facie evidence of any matters required or authorized by or under this Act to be entered therein.
 - (d) Right holders may sign ownership of the subject of protection under this Act by means of commonly used signs, namely the initials of each legal title surrounded by a circumference, provided they are not misleading or false, any use of those signs that is misleading or false may be deemed an act of unfair competition for the purposes of Parts III and IV of this Act.



(2) The Industrial Property Office shall publish in the Official Gazette all the publications provided for in this Act.

Corrections of Errors,
Extension of Time.

117. (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 Industrial Property Registration Office or in any recording effected pursuant to this Act or Regulations, substantive errors, however, may only be modified by the Court, under due process, substantive errors are those that, if modified, will affect the rights conferred.

(2) Unless otherwise provided in this Act, 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.

118. The Registrar may 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 and appeal.

119. (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 a utility model certificate or the registration of an industrial design or of a layout-design or of a mark or collective mark or certification sign or of a geographical indication, 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 sixty days of the date of the decision.

(3) Any decision taken by the Minister under this Act, in particular the grant of a compulsory license under sections 14 and his decision relating to the remuneration provided in respect of a compulsory license, may be the subject of an appeal by any interested party before the Court and such appeal shall be filed within sixty days of the date of the decision.

(4) Nonetheless any appeal against the grant of a compulsory licence shall not stay or suspend the use of the patented invention or of the utility model during the appeal process, the right holder's sole remedy shall be action for the recovery of remuneration.



Regulations.

120. The Minister shall make 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.

Transitional provisions.

121. (1) Unless otherwise provided, the provisions of this Act shall be effective as from the dates established in accordance with section 1 of this Act and apply to all applications that are pending on the date of commencement of this Act, acts by the Registrar that have already produced effects shall be maintained.

(2) The provisions of subsection (1) shall apply mutatis mutandis to enforcement, all decisions by the Court, whether final or interlocutory, that have produced effects, shall be maintained.

(3) Where this Act in any way expands rights or creates new rights, including extension of terms of protection, existing registrations shall benefit from such expansion or creation, but where this Act reduces or eliminates rights, existing registrations shall not be affected and shall continue existing as if this Act had not been enacted, except for the provisions on enforcement, which shall apply in accordance with subsection (2) of this section.

(4) Where this Act provides for new systems of classification, existing registrations shall be reclassified only at the time of their renewal, if any, the procedures and the fees for the reclassification of existing registrations shall be established in the Regulations.

(2) The provisions of subsection (1) of this section shall apply mutatis mutandis to enforcement, all decisions by the Court, whether final or interlocutory, that have produced effects, shall be maintained.

(3) Where this Act in any way expands rights or creates new rights, including extension of terms of protection, existing registrations shall benefit from such expansion or creation, but where this Act reduces or eliminates rights, existing registrations shall not be affected and shall continue existing as if this Act had not been enacted, except for the provisions on enforcement, which shall apply in accordance with subsection (2).

(4) Where this Act provides for new systems of classification, existing registrations shall be reclassified only at the time of their renewal, if any, the procedures and the fees for the reclassification of existing registrations shall be established in the Regulations.



Repeal of Caps. 157, 158 and 159. **122.** The Patent Decree Cap. 157, Designs (Protection) Decree Cap. 158 and Trade Marks Decree Cap. 159 are hereby repealed.

Saving. **123.** Without prejudice to the repealed laws as provided under section 122 of this Act, any things done in accordance with any repealed laws shall be deemed to have been done in accordance with the provisions of this Act.

PASSED by the House of Representatives on 28th day of March, 2008.

{IBRAHIM MZEE IBRAHIM}
CLERK OF THE HOUSE OF REPRESENTATIVES