

INDUSTRIAL PROPERTY ACT, 2014

(Act 7 of 2014)

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- (a) stop, search and board, whether forcibly or otherwise, any conveyance in which he or she reasonably suspects that there is any infringing product; and
- (b) seize, remove or detain such infringing product and anything which appears to him or her to be or to contain; or to be likely to contain, evidence of an offence under this Act.

(3) In the exercise of his or her power under subsection (2), an authorised officer may order the person in charge of a vehicle—

- (a) to stop and not to proceed until so authorised; or
- (b) to bring the vehicle to any police station.

PART IX - MISCELLANEOUS

121.(1) The Registrar shall maintain separate registers for patents, industrial designs, layout-designs, marks, certification marks, collective marks and geographical indications.

(2) All the recordings provided for in this Act shall be entered into the registers referred to in subsection (1).

(3) Any person may inspect the registers referred to in subsection (1) and may obtain extracts therefrom, on the payment of a prescribed fee.

122. The Registrar may, subject to any provision in the Regulations, correct any error of translation or transcription, clerical error or mistake in any registration entered into pursuant to this Act or the Regulations.

123.(1) ~~123.1(1) If a person is found to be infringing a patent, the Registrar may, subject to any provision in the Regulations, order the person to pay to the patent owner a sum of money not exceeding the amount of the royalties that would have been payable by the person if he had obtained a licence from the patent owner on reasonable commercial terms and conditions.~~ If a person is found to be infringing a patent, the Registrar may, subject to any provision in the Regulations, order the person to pay to the patent owner a sum of money not exceeding the amount of the royalties that would have been payable by the person if he had obtained a licence from the patent owner on reasonable commercial terms and conditions.

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- (a) manufactures a product that incorporates a registered industrial design, or a substantial imitation that may cause confusion or likelihood of confusion;
- (b) exports, sells, displays or offers for sale, has in stock, conceals or receives, with a view to use for economic purposes, an object that illegally incorporates a registered industrial design, or a substantial imitation that may cause confusion or likelihood of confusion; or
- (c) imports a product that incorporates an industrial design registered in Seychelles or a substantial imitation that may induce to error or confusion, and that has not been placed on the foreign market directly by the rightsholder or with his or her consent,

commits an offence.

(3) Any person who, without the authorisation of registered mark rightsholder, willfully and on a commercial scale —

- (a) reproduces a registered mark, in whole or in part, or imitates it in a way that may create likelihood of confusion;
- (b) alters the registered mark already affixed on a product placed on the market; or

use of distinctive signs in bad faith or for unfair competition purposes, for which there shall be no time limit to initiate the proceedings.

Chapter 3 - Criminal Remedies

Offence

118.(1) Any person who, except under justifiable circumstances provided under this Act, without the consent of a patent or utility model rightsholder, willfully and on a commercial scale —

- (a) manufactures the product that is protected by a patent or utility model certificate;
- (b) uses a process invention or minor invention that is patented or protected by utility model certificate;
- (c) exports, sells, displays or offers for sale, has in stock, conceals or receives, a product manufactured using a patented invention or minor invention protected by utility model certificate, or a product obtained by a patented process invention; or
- (d) imports a product that is the object of an invention or minor invention protected by patent or utility model certificate, or obtained by a process invention patented into Seychelles that has not been patented in any other country.

INDUSTRIAL PROPERTY ACT, 2014

(Act 7 of 2014)

AN ACT to provide for the adequate protection and enforcement of industrial property rights in order to encourage local inventive and innovative activities, stimulate transfer of foreign technology, promote foreign direct investment, create competitive business environment, discourage unfair practices, enhance free and fair practice and thereby foster socio economic development and for matters connected therewith or incidental thereto.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1. This Act may be cited as the Industrial Property Act, 2014 and shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.

Short title and commencement

2. In this Act, unless the context otherwise requires —

“authorised officer” means a police officer or any officer or class or description of officers appointed by the Minister to exercise the powers and perform the duties conferred and imposed on an authorised officer by this Act.

“certification mark” means any mark that distinguishes goods or services that are certified by the owner of the certification mark in relation to origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics from other goods or services not so certified.

“collective mark” means any mark that

“geographical indication” means an indication that identifies goods as originating in the territory of a country; or a region or locality in that territory, where a given quality, reputation or other characteristics of the goods is essentially attributable to its place of origin;

“goods” means any natural or agricultural

“integrated circuit” means a product in its final form or intermediate form, in which the elements, at least one of which is an active element, and some or all of the inter-connections are integrally formed in or on a

Chapter 2 - Provisional Measures and Civil Remedies

111.(1) The Court shall have power to order prompt and effective provisional measures, to —

- (a) prevent an infringement of a right from occurring, in particular to prevent the entry into channels of commerce, imported goods after completing customs formalities; and
- (b) preserve relevant evidence in regard to the alleged infringement.

(2) The Court shall have power to order provisional measures, without giving the other party an opportunity of being heard, where appropriate, in particular where any delay is likely to cause irreparable harm to the rightsholder, or where there is a demonstrable risk of evidence being destroyed.

(3) The Court may, before making a decision under subsection (2), require the applicant to provide any reasonably available evidence in order to satisfy it with a sufficient degree of certainty that the applicant is the rightsholder and that the applicant's right is being infringed or that such infringement is imminent, and order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

(4) Where provisional measures have been ordered without giving the other party an opportunity of being heard, the defendant may file a request for review ik10.DD(provide)Tj4048820000 TD(a) (with: 470,00000 TD(iweek)Tj: 122.03.1482 0.0000 TD(right))Tj0789.61

technology that is protected by a patent or a utility model, a registered industrial design or layout-design of an integrated circuit in Seychelles without the approval of the rightsholder;

“Paris Convention” means the Convention for the Protection of Industrial Property signed at Paris on 20th March 1883 as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967, and as amended on September 28, 1979;

“patent” means a patent of any invention granted under this Act;

“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;

“patentee” means the owner of a patent;

“person” includes any public body, company or association or any body of persons, corporate or unincorporated;

“prescribed” means prescribed by Regulations;

“priority date” means the date of filing of an earlier foreign application that serves as the basis for claiming right of priority;

“Registrar” means the person appointed by the President to be the Registrar-General of Patents and Trademarks for the purposes of this Act;

“Regulations” means the regulations made under this Act;

“rightsholder” means the owner of a protected industrial property right or his or her successors in title;

“trade name” means the name or designation identifying and distinguishing an enterprise;

“utility model certificate” means a title granted to protect a minor invention, which may not meet the stringent requirements of patentability of inventions;

“well-known mark” means a mark considered by t

- (c) parties to a legal proceeding shall be allowed to be represented by independent legal counsel;
- (d) infringement claims shall be substantiated with relevant evidence; and
- (e) measures or remedies against infringement shall be effective to prevent and deter infringement and adequate to redress the adequate

4.(1) Any patent, utility model certificate, industrial design registration certificate, registered mark, certification mark, collective mark, trade name and layout-design or application which may be transferred by sale or inheritance or any other means in accordance with this Act or any other written law.

(2) Any transfer referred to in subsection (1) shall be recorded with the Registrar, upon payment of fees prescribed in the Regulations.

PART II - PATENTS

Chapter 1- General Provisions

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

(2) An invention, shall be considered new if it is not anticipated by prior art. 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.

(3) Notwithstanding the provisions of subsection (2) the disclosure to the public of the invention shall not be taken into consideration if it occurred within 12 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 or her predecessor in title or an abuse committed by a third party in relation to the applicant or his or her predecessor in title.

(4) An invention shall be deemed as involving an inventive step if having regard to the prior art relevant to the application and as defined in subsection (2), it would not have been obvious to an ordinary person having skill in the art at the filing date or, as the case may be, at the priority date of the claimed invention.

(5) An invention shall be considered industrially applicable if—

- (a) it can be made or used in any kind of industry;
or
- (b) it has specific, substantial and credible utility.

(6) For the purposes of this section, the “industry” shall be construed to any human

(2) The provision of subsection (1)(e) shall not apply to products for use in any of the 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.

Chapter 2 - Right to a Patent and Naming of Inventor

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

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

(3) Where an invention is made in the execution of a contract of employment, the right to the patent shall belong, in the absence of contractual provisions

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

Chapter - 3 Application, Examination and Granting of Patents

10.(1) The person having the right to a patent for an invention in accordance with section 9 may, upon payment of the prescribed fees, apply to the Registrar for the grant of a patent for that invention.

(2) The application for a patent shall be made in writing in prescribed form and shall contain a request, a description, one or more claims, an abstract, and where required, one or more drawings.

(3) In accordance with subsection (2)—

- (a) the request shall contain a petition to the effect that a patent be granted, the name of and other prescribed data concerning the applicant, the inventor and the agent, if any, and the title of the invention and in a case where the applicant is not the inventor, the request shall be accompanied by a statement justifying the applicant's right to the patent;
- (b) the description shall disclose the invention in a manner sufficiently clear and complete for the

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of another's enterprise shall constitute an act of unfair competition, whether or not this act or practice creates confusion.

(2) The damage to another's goodwill or reputation may, in particular, result from the dilution of the goodwill or reputation attached to—

- (a) a mark, whether registered or not;
- (b) a trade name;
- (c) any distinctive sign other than a mark or a trade name;
- (d) a product's external appearance;
- (e) the presentation of goods or services; or
- (f) a famous person or a well-known fictional character.

(3) The lessening of the distinctive nature or advertising value of a mark, trade name or any other distinctive business sig

description shall clearly identify the origin of the resource; and

(ii) the description of an invention may be used to interpret the claims;

(c) the claim or claims shall define clearly and concisely the matter for which protection is sought and shall be fully supported by the description; and

(d) the abstract, which must be concise and precise, shall merely serve the purpose of technical information and shall not be taken into account for the purpose of interpreting the scope of protection.

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

(5) An applicant may withdraw the patent application at any time before a patent is granted.

(6) An applicant who is not domiciled or who has no established business in Seychelles shall appoint an agent who is domiciled in Seychelles.

(7) An application may be made by an agent and the power of attorney from the applicant shall be submitted prior to granting of the patent.

11.(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, at any time prior to the grant of patent, divide the application into two or more applications (“divisional applications”), provided that each divisional application shall not go beyond the disclosure in the initial application.

(3) Where an application is divided, each divisional application shall be entitled to the filing date or, where applicable, the priority date of the initial application.

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

Amendment
of application

12. The applicant may, at any time prior to the grant of patent, amend the application, provided that the amendment shall not go beyond the original claims in the initial application.

Right of
priority

13.(1) The application may contain a declaration claiming a right of 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 of any state party to the Convention or any member state of the World Trade Organisation.

(2) Where the application contains a declaration under subsection (1), the Registrar may request the applicant to furnish, within the prescribed period, a copy of the earlier application certified as correct by the office with which it was filed.

(3) The period of claiming right of priority, under subsection (1) is 12 months beginning from the first filing date, excluding the date of filing, of the invention in a foreign country.

(4) When the application is made within the period of priority, the filing in Seychelles of that application before the expiration of the period of priority 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.

over competitors or which lead to such advantages being obtained, such as the breach of environmental or labor law.

(3) Any person damaged or likely to be damaged by an act of unfair competition shall be entitled to the remedies referred to in Part VIII.

(4) The provisions of this Part shall apply independently of, and in addition to, any written law protecting inventions, utility models, industrial designs, layout-designs, distinctive signs, literary and artistic works and other intellectual property subject matters.

102.(1) Any act or practice which, in the course of industrial or commercial activities, in relation to industrial property rights creates or is likely to create confusion with another's enterprise or its activities, in particular with the goods or services offered by such enterprise, shall constitute an act of unfair competition.

Confusion
with another's
enterprise or
its activities

(2) The confusion may relate in particular to —

- (a) a mark, whether registered or not;
- (b) a trade name;
- (c) any distinctive sign other than a mark or a trade name;
- (d) a product's external appearance;
- (e) the presentation of goods or services; or
- (f) a famous person or a well-known fictional character.

103.(1) Any act or practice, in the course of industrial or commercial activities, in relation to industrial property rights that damages, or is likely to damage, the goodwill or reputation

Damaging
another's
goodwill or
reputation

(5) Where 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.

14.(1) The applicant shall, at the request of the Registrar, furnish the date and number of any application for a patent filed by him or her abroad relating to the same or essentially the same inventions as that claimed with the Registrar.

(2) The applicant shall, at the request of the Registrar, furnish the following documents relating to the foreign applications referred to in subsection (1)—

- (a) 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;
- (b) a copy of the patent granted on the basis of foreign patent application; and
- (c) a copy of any final decision rejecting the foreign application or refusing the grant of the patent requested in the foreign application.

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

15.(1) The Registrar shall approve the date of receipt of the application as the filing date, provided that, at the time of receipt, the application contains —

- (a) an express or implicit

- (b) indications allowing the identity of the applicant to be established; and
- (c) a part which, on the face of it, appears to be a description of an invention.

(2) If the Registrar determines that the application did not, at the time of receipt,

***Chapter 4 - Grant of a Patent, Duration of a Patent and
Annual Fees***

17.(1) A patent shall be granted, where the Registrar finds that the conditions referred to in section 16 (1) are fulfilled or otherwise he or she shall refuse the application and notify the applicant of that decision.

- (2) When a patent is granted the Registrar shall —
- (a) publish a reference to the grant of the patent in the *Gazette*;
 - (b) issue the applicant a certificate of the grant of the patent and a copy of the

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

(3) The patentee shall, in addition to any other rights, remedies or actions available to him or her, have the right, except under circumstances provided under sections 19, 20 and 26, to institute proceedings in the Court against any person who infringes the patent by performing, without his or her agreement, any of the acts referred to in subsection (2) or who performs acts which make it likely that infringement~~ment~~88ing

- (e) acts of extemporaneous preparation in a pharmacy of a medicine for an individual in accordance with prescription given by a registered medical or dental practitioner; or
- (f) acts of making, constructing, using, or selling the patented invention solely for uses reasonably related to the development and submission of information required under any law of Seychelles or another country that regulates the manufacture, construction, use or sale of any product, provided that any product produced under such authority shall not be made, used, or sold in the country other than for purposes related to generating such information, and that the product shall only be exported for the purposes of meeting marketing approval requirements.

20.(1) 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 Seychelles, has a personal right to continue such use or to use the invention as envisaged in such preparations.

(2) The right of prior users referred to in subsection (1) may be transferred 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.

21. A patent shall be granted for a period of 20 years commencing from the filing

without infringing an earlier patent provided that the invention claimed in the second patent involves an important technical advancement of considerable economic significance in relation to the invention claimed in the first patent.

24.(1) An application for grant of non-voluntary licence should be made to the Registrar upon payment of the prescribed fee.

(2) The application shall be accompanied with the evidence that the applicant was unable to obtain a licence on reasonable terms and conditions within a reasonable period and that he or she is capable of working the patented invention in Seychelles.

(3) The requirement for evidence of a prior attempt to obtain a voluntary licence under subsection (1) shall not apply, where the request for non-voluntary licence is based on the grounds of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use.

(4) Each application for a non-voluntary licence shall be considered by the Registrar on its individual merits.

25.(1) Where the Registrar finds the application to be satisfactory, it shall grant a non-voluntary licence.

(2) The non-voluntary licence shall be registered and published in the *Gazette*.

(3) The grant of the non-voluntary licence shall not exclude—

(a) the exploitation of the patented invention publi9 excsation

(b) the grant of other non-voluntary licences.

(4) Where a non-voluntary license is granted based on an application under section 23(e), the owner of the earlier patent or his licensee shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the subsequent patent.

(5) The use authorised in respect of the earlier patent shall be non-assignable, except with the assignment of the later patent.

(6) The scope and duration of the non-voluntary licence shall be limited to the purpose for which it was authorised.

26.(1) Any person who is granted a non-voluntary licence shall have the right to exploit the patented invention in Seychelles predominantly to meet the needs of the domestic market according to the terms set down in the decision granting the licence.

(2) The person who is granted a non-voluntary licence may only transfer the right under subsection (1) together with the enterprise or part of the enterprise within which the patented invention is exploited.

(3) A person who is granted a non-voluntary licence for the exploitation of a patented invention shall have the duty to—

(a) commence exploitation

Invalidation
of a patent

30.(1) Any interested person may request the Court to invalidate a patent.

(2) The Court shall invalidate the patent in whole or in part if the person requesting the invalidation proves that the —

- (a) subject matter of the patent is —
 - (i) not an invention within the meaning of section 2; or
 - (ii) does not meet the requirements of patentability; or
 - (iii) is excluded from patent protection according to sections 6 and 7;
- (b) description does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art; or
- (c) owner of the patent is not the inventor or the employer of the inventor or his or her successor in title.

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

(4) The final decision of the Court shall be notified to the Registrar, who shall record it and publish a reference thereto in the *Gazette*.

Transfer of
patent

31. In the event a dispute over the rights relating to the patent arises, the interested person who won the case may apply the Court to transfer the title to him or her instead of invalidating it under section 30.

PART III - UTILITY MODELS CERTIFICATES

Protection
of minor
inventions

32.(1) A minor invention that possesses novelty and industrial applicability shall give rise to a right to protection.

of the date of registration, and it shall be recorded and a reference thereto published in the *Gazette*.

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

Invalidation
of registration

(2) The Court shall invalidate the registration, if the person requesting the invalidation proves that any of the requirements of sections 2, 65 and 66 is not fulfilled.

(3) 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 in the *Gazette*.

Chapter 5 - Collective Marks, Certification Marks and Trade Names

82.(1) Subject to subsections (2) to (4), the provisions of Chapters 1 to 4 of this Part, shall apply to collective marks as they apply to marks.

Collective
marks

(2) 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 terms and conditions governing the use of the collective mark.

(3) The registered owner of a collective mark shall notify the Registrar of any changes made in respect of the terms and conditions referred to in subsection (2).

(4) In addition to the grounds provided in section 81(1), the Court shall invalidate the registration of a collective mark if the person requesting the removal proves that only the registered owner uses the mark, or that he or she uses or permits its use in contravention of the terms and conditions referred to in subsection (2) or that he or she uses or permits its use in a manner liable to deceive trade circles or the public as to the origin or any other common characteristics of the goods or services concerned.

(2) The right shall be evidenced by a utility model certificate issued by the Registrar.

33.(1) A minor invention shall not be considered new if, at the time of filing of the application, it has already been described in printed publications, made available to the public or has already been publicly used in Seychelles.

(2) Any description or use, within 6 months prior to the filing of the application, shall not destroy novelty if it is based on the work of the applicant.

34. The following shall not be protected by a utility model certificate —

- (a) changes in the shape, proportions or material of a patented object or of one that forms part of the public domain, except where such a change alters the qualities or functions or the object thereby producing an improvement in its use or the effects of its intended functions;
- (b) the mere replacement of elements in a known combination by other known elements having an equivalent function, which does not thereby produce an improvement in its use or the effect of its intended functions; or
- (c) a minor invention that is contrary to public order or morality.

35. The Registrar shall, after approving a filing date, undertake a formal examination of the application and take a decision to grant or refuse a

parties from exploiting the minor invention without the authorisation of the rightsholder.

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

(2) At any time prior to the grant or refusal of a utility model certificate, an applicant for a utility model certificate

taken into consideration if it occurred within 6 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 or her predecessor in title or an abuse committed by a third party in relation to the applicant or his or her predecessor in title.

(4) An industrial d2TD(the)Tj18.5630713.8919 -6445 048.228.2081 0.000

the absence of an express term to the contrary, shall belong to both the employer and the employee and the industrial design shall be owned jointly in equal shares.

(5) When two or more persons have created the same industrial design independently, the right to the industrial design shall belong to the person who first filed an application for registration or who has the earliest priority date.

43.(1) The creator shall be named as such in the application and the industrial design registration certificate, unless in a special written declaration addressed to the Registrar, the creator indicates that he or she wishes not to be named.

(2) Any promise or undertaking by the creator made to any person to the effect that he or she will make such declaration shall have no legal effect.

44.(1) An application for registration of an industrial design shall be made in the prescribed form and filed with the Registrar upon payment of the prescribed application fee.

Opposition

72.(1) Any interested person may, within the period of 60 days and in the manner prescribed by the Regulations and upon payment of the prescribed fee, file an objection, in writing and stating the grounds against the registration of the mark with the Registrar on grounds that one or more of the requirements of sections 2 and 66, and the regulations pertaining thereto are not fulfilled.

(2) The Registrar shall immediately send a copy of the objection to the applicant and the applicant shall furnish to the Registrar a counter-statement stating the grounds on which he or she relies for his or her application within 1 month after receipt of the objection or such further period not exceeding 3 months, as the Registrar may allow and if the applicant does not do so, the application shall be deemed to have been withdrawn.

(3) If the applicant sends a counter-statement, the Registrar shall furnish a copy of the counter-statement of the applicant to the person who made objection and examining the merits of the case, which may include hearing either party, should they wish to be heard, it shall decide to whether or not to proceed with the registration of the mark.

(4) The Registrar shall furnish copies of its decision under subsection (3) to the applicant and the person who filed the objection within the period prescribed by the Regulations.

Pending cases

73.(1) After an application is published and until the registration of the mark, the applicant shall enjoy the same privileges and rights as he or she would have, if the mark had been registered, provided that it shall be valid defence to an action brought in respect of an act done after the application was published, if the defendant establishes that the mark could not have been validly registered at the time the act was done.

(2) Any infringement proceedings may not be initiated before the date on which the mark is in fact registered

justifying the applicant's right to the registration of the industrial design, where the applicant is not the creator.

(4) The application may relate to two or more designs incorporated in products belonging to the same class in the international classification.

(5) (a) The applicant may divide the application (hereinafter, "the initial application") at any time during pendency in order to separate into two or more applications (hereinafter, "divisional applications") the designs contained in the initial application.

(b) A division shall not be accepted if it involves a change in or addition to any of the designs contained in the initial application.

(c) Each divisional application shall retain the filing date and the right of priority of the initial application.

(d) After the division, each divisional application shall be independent.

(e) If publication of the application occurred before the division, the publication shall have effect for each divisional application.

(6) The applicant may withdraw the industrial design registration application at any time prior to the registration of the industrial design.

(7) An applicant may claim a right of priority in his application, in which case section 13 shall apply *mutatis mutandis*, except that the period specified in section 13(3) shall be construed as 6 months.

(8) An applicant who is not domiciled or who has no established business in Seychelles shall appoint an agent who is domiciled in Seychelles.

(9) An

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

47. The holder of an industrial design rights may not prohibit third parties from —

- (a) acts performed for non-commercial and experimental purposes; or
- (b) acts in respect of a product embodying the protected industrial design after the product has been put on the market by the owner of the industrial design or with his or her consent anywhere in the world.

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

(2) The Court shall invalidate the registration if the person requesting the invalidation proves that any of the requirements of sections 2, 40, 41 and 42 are not fulfilled or if the registered owner of the industrial design is not the creator or his or her successor in title.

(3) Where the registered owner is found not to be the creator or his or her successor in title, the creator or his or her successor in title may request the Court to order the transfer of the title to him or her instead of invalidating it.

(4) When the grounds for invalidation are established with respect to only one or some of the designs included in the registration, invalidation shall be decided accordingly.

- (c) he or she files an application for registration of his or her own mark before lodging a statement of opposition with the Registrar.

(2) The owner of an unregistered mark that is well-known in Seychelles has the exclusive right to prevent any unauthorised person from using in the course of trade any sign that is identical with or similar to the unregistered well-known mark for goods and services that are identical with or similar to the goods and services for which the unregistered well-known mark is used provided that such use is likely to confuse the public.

Chapter 2 - Procedures for Registration of Mark

67.(1) The application for registration of a mark shall be filed with Registrar and shall —

- (a) contain a request, a reproduction of the mark and a list of goods or services for which registration of the mark is requested, listed in the order of the relevant classes of international classification;
- (b) be accompanied by the payment of the prescribed application fee.

(2) 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.

(3) Where the applicant wishes to claim colour as a distinctive feature of the mark, he or she shall submit a statement to that effect as well as the name or names of the colour or colours claimed and an indication, in respect of each colour, of the principal parts of the mark which are in that colour.

53.(1) The Registrar shall record and publish in the Gazette any change in the ownership of the registration of an industrial design or the application for the registration of an industrial design at the request of either the holder or the new owner of the registration or application.

Change of ownership

(2) The request to record a change in ownership shall conform to the requirements prescribed in the Regulations.

(3) A change in the ownership of a registration or an application shall have no effect against third parties until it has been recorded.

PART V - LAYOUT-DESIGNS OF INTEGRATED CIRCUITS

Chapter 1 - Requirements for Protection

54.(1) The lay out designs of integrated circuits may be protected under this Act only when it is original within the meaning of section 55.

Subject matter of protection

(2) A registration of the layout-design may only be requested if it has not yet been commercially exploited, or has been commercially exploited for not more than 2 years, anywhere in the world.

55.(1) A layout-design shall be considered original if it is the result of the intellectual effort of its creator and if, at the time of its creation, it is not known among the creators of layout-designs and manufacturers of integrated circuits.

Originality

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

56.(1) The right to layout-design protection shall belong to the creator of the layout-design.

Right to protection

(2) Where several persons have jointly created a layout-design, the right shall belong to them jointly.

(3) Where the layout-design has been made or created in the performance of a contract of employment or in the execution of a work, the right to protection shall belong, unless otherwise stated in the contract, to the employer or the person who commissioned the work.

Chapter 2 - Application, Examination, Registration and Scope of Protection

57.(1) Applications for the registration of layout-designs shall be in writing and shall be filed with the Registrar and separate applications shall be filed for each layout-design.

- (2) The application under subsection (1) shall —
- (a) contain a request for registration of the layout-design and a brief and accurate description of the layout-design;
 - (b) indicate the name, address, nationality and, if different from the address, the habitual residence of the applicant;
 - (c) be accompanied by the power of attorney granted to the agent by the applicant, where the application is made through an agent.
 - (d) specify the date of the first commercial exploitation of the layout-design anywhere in the world or indicate that such exploitation has not yet commenced; and
 - (e) provide information establishing the right to protection under section 56.

(3) The application shall be accompanied by a copy or

enjoys protection pursuant to Article 6~~ter~~ of the Paris Convention for the Protection of Industrial Property, notwithstanding, the mark may be registered where the competent authority of the State or of the international intergovernmental organisation concerned has granted an authorisation;

(h) consists 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.

(2) For the purposes of subsection (1) (f), in determining whether a mark is well known, consideration shall be given to the degree of recognition of the mark in the relevant sector of the public in Seychelles, including but not limited to the degree of recognition arising from the advertising of the mark in Seychelles.

(3) Notwithstanding the provisions of subsection (1)(d), the Registrar or the Court may decide that a mark has acquired secondary meaning or distinctiveness through continued use, and in such case, the mark shall be registered.

66.(1) The prior user of a mark whose name does not appear in the Register or who does not have an application pending under section 65(1)(h), may

that there exists a likelihood of confusion on the part of the public;

- (ii) it constitutes a reproduction, an imitation, or a translation of an earlier mark that is well-known in Seychelles and the goods or services in respect of

drawing of the layout-design and where the integrated circuit has been used commercially, by a sample of the integrated circuit, and information defining the electronic function that the integrated circuit is designed to perform provided that the applicant may exclude from the copy or the drawing the parts which relate to the manner in which the integrated circuit is manufactured, in so far as such parts are necessary for the identification of the layout-design.

(4) Where the application does not duly comply with the requirements of subsections (2) and (3), the Registrar shall notify the applicant of the defects and invite him or her to correct them within 2 months —

- (a) 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;
- (b) where the applicant fails to submit drawings of a layout-design with the original application, but corrects the application for the registration of the layout-design within the period specified the date of receipt of the corrections shall be deemed to be the date of filing of the application; or
- (c) where the applicant fails, after communication by the Registrar, to correct the application within the period specified, the application shall be deemed not to have been filed;

integrated circuit

(c) the performance of any of the