

Patent, Design, and Trade-Mark Act, 1965

Preamble

- 1 Preliminary
- 2 Patents
- 3 Designs
- 4 Trade-Marks
- 5 Miscellaneous

History

August 30, 1965 First Promulgated. Nepal Rajapatra, Vol. 15, No. 14A (E), Bhadra 14, 2022

October 18, 1987 First Amendment. Nepal Rajapatra, Vol. 37, No. 35 (E), Kartik 1, 2044

Preamble:

Whereas it is necessary to make timely legal arrangements in respect to patents, designs and trade-marks for the convenience and economic benefit of the general Public,

Now therefore, His Majesty King Mahendra Bir Bikram Shah Dev has enacted this law on the advice and with the approval of the National Panchayat.

Preliminary

1. Short Title Extent and Commencement

- (1) This law may be called the patent, Design and Trade Mark Act, 1965,
- (2) It shall be applicable throughout the Kingdom of Nepal.
- (3) It shall come into force at once.

2. Definitions

In this law, unless otherwise meant with reference to the subject or context:

(a) patent means any useful invention relating to a new method or process of manufacture, operation or publicity of any material or a combination of

materials, or that made on the basis of a new theory or formula.

(b) Design means the form or shape of any material manufactured in any manner.

(c) Trade-mark means words, symbols, or pictures or a combination thereof to be used by any firm, company or individual in its products or services to distinguish them the produces or services or others.

(d) Department means the department prescribed by His Majesty's Government by notification in the Nepal Rajapatra, and the Department of Industry unless so prescribed.

(e) Schedules means the schedule to this act.

(f) Prescribed or as prescribed means prescribed or in the manner prescribed in the rules framed or orders issued under this act.

Patents

3 ACQUISITION OF PATENT RIGHTS

(1) Any person desirous of obtaining right over any patent shall have such patents registered in his name under this act.

(2) The patent registered in the name of any person under this Act shall not be copied by any other person or operated or used in his name during the period mentioned in Section 3 without the written permission of the patentee.

(3) The patent registered in the name of any person under this act any be transferred by him in any manner to any other person like movable property.

Provided that:-

The person obtaining right over the patent consequent to such transfer shall not operate or use it in any manner in his name or that of any person other than the patentee himself unless he (the transferee) has the transfer effected under Section 9 of the act in the relevant Register maintained at the Department.

4 APPLICATION FOR ACQUIRING RIGHT OVER PATENT

(1) A person desirous of having any patent registered in his name shall submit to the Department an application according to the specimen form specified in

Schedules 1(a), containing the particulars mentioned below, along with all available evidence in his possession:-

- (a) Namely address and occupation of the parson inventing the patent.
 - (b) If the applicant himself is not the inventors, how and in what manner he acquired title thereto from the inventor.
 - (c) Process of manufacturing, operating or using the patent.
 - (d) The theory or formula if any on which the patent is based.
- (2) Along with the application mentioned in Sub-Section (1), the applicant shall also submit models and drawings along with particulars, of the patent, as well as the fee specified in Schedule 3.

5 INVESTIGATION BY DEPARTMENT

- (1) On receipt of application submitted under Section 4, the Department shall, on the advice also of experts if so considered necessary, conduct investigation or studies to ascertain whether the patent investigations in the application is a new invention or not, and whether it is useful to the general public or not, and thereafter decide whether or not to register such patent.
- (2) In case the Department feels that any patent should not be registered in the circumstances mentioned in Section 6, it shall give a notice to the applicant to the effect that the patent cannot be registered according to his application.
- (3) (Repealed on October 18, 1987).

6 CIRCUMSTANCES IN WHICH PATENTS CANNOT BE REGISTERED

- (1) The Department shall not register any patent under this act in the following circumstances:-
 - (a) In case the patent is already registered in the name of any other person, or
 - (b) In case the applicant himself is not the inventor of the patent sought to

be registered by him, nor has he acquired rights over it from the original inventor, or

(c) In case the patent sought to be registered is likely to adversely effect the public health, conduct or morality or the national interest, or

(d) In case (the registration of the patent) will constitute a contravention of existing Nepal law.

Provided that nothing contained in Clause (a) shall be deemed to have prejudiced the transfer of the registration of any patent under the provisions of Section 9.

(2) In the circumstances mentioned in Sub-Section (1), the department may cancel the registration of any patent which had been registered.

Provided that:-

The department shall, before cancelling the registration of any patent, provided opportunity the patentee to show cause, if any, why the registration of this patent should not be cancelled.

7 REGISTRATION OF PATENT

(1) On receipt of applications filed under Section 4 for registration of any patents, the department shall, after completing necessary investigations under Section 5 issue a registration certificate according to the scotchman form indicated in Schedule 2 (a) to the applicant, except in the circumstances mentioned in Section 6.

(2) For obtaining the certificate mentioned in Sub-Section (1), the applicant shall pay the registration fees specified in schedule 3 (1) (b) to the department.

7A. Registered patents to be published.

(1) Patents registered under this act, other than those which must be kept

secret in the national interest, shall be published by the department in the Nepal Rajapatra for the information of the public.

(2) In case anybody desires to see or copy the particulars, maps, or drawings of a patent published under Sub-Section (1), he may be allowed to do so after paying the fees prescribed by the department.

(3) In case anyone has any objection to such a patent, he may file a complaint with the department within a period of 35 days from the date of seeing or copying the patent under Sub-Section 92).

(4) In case any complaint is received under Sub-Section (3), the department shall take necessary action after conducting inquiries.

8 TERM OF PATENT

(1) The title of the patentee to the patent shall be valid for a period of seven years from the date of poristration thereof under Section 7, except when it is renewed under Section 23 B.

(2) Notwithstanding, anything contained in Sub-Section 91), in the case of patents registered before the commencement of this Section, the term fixed according to the provision in force at the time of registration thereof shall be valid, and after the expiry of that term, the patent must be renewed under Section 23B.

9 TRANSFER OF REGISTERED PATENT

(1) In case any patentee transfers any patent registers in his name after relinquishing his title there to the transferee shall submit an application to the department for removing the name of the transfer from the patent register and then registering his own name therein.

(2) In case any person files an application under Sub-Section (1), the department shall send a notice to the sertentee whose name is mentioned in the register direction him to file complaints with it within 15 days if he has any objection tot he transfer of his patent according to the application submitted by the transferee. In case the patentee files complaints accordingly within this time-limit ad it becomes necessary to determine which of the two parties has title to the patent, such transfer shall be stayed

pending the judgment of a court on such dispute. In case no complaint is filed within this time-limit, the transfer all be effected as requested in the application.

(3) The person applying for transfer of patent under the provisions of this Section shall pay along with the application the prescribed amount as transfer fee to the department.

10 SUBMISSION OF DESIGN OR HODEL OF PATENT TO GOVERNMENT ARCHIVES

The patentee shall submit to the National Archive also a copy of the design or model of the article manufactured according to the patent registered under this act.

11 PUNISHMENT FOR VIOLATION OF SECTION 3

In case any person commits or attempts to commit, or abets the commitment of, any act in contravention of, any act in contravention of any provisions of Sub-Section (2) or the restrictive clause contained in Sb-Section (3) of Section 3, he will be punished with a fine not exceeding Rs 2000 as well as confiscation of all articles or goods connected with such offence on the order of the department.

Designs

12 ACQUISITION OF TITLE TO DESIGN

(1) Any person may acquire under this act title to the design of any article manufactured or caused to be manufactured by him after getting it registered under Section 14.

(2) No person shall manufacture any article by using the design registered in the name of any person under Section 14 Without the latter's written permission, or by imitating such designs so as to deceive the general public.

13 APPLICATION FOR REGISTRATION OF DESIGN

(1) Any person desirous of having the design of any article manufactured or caused to be manufactured by him registered under Section 14 shall submit to the Department an application according to the specimen form indicated in Schedule 1 (b), together with four copies of such design and maps, and drawings and particulars thereof.

(2) The person submitting an application under Sub-Section (1) shall pay, along with the application, the application fee specified in Schedule 3 (2) (a), to the department.

14 REGISTRATION OF DESIGN

(1) On receipt of the application filed by any person under Section 13, the department shall register the design in the name of the applicant and then issue to him a certificate as mentioned in Schedule 2(b).

Provided that in case such design hurts the prestige of any individual or institution or adversely affects the public conduct or morality, or undermines the national interest, or in case such design has already been registered in the name of any other person, it shall not be registered under this-Section.

(2) For obtaining the certificate mentioned in Sub-Section (1), the applicant shall pay a design registration fee as prescribed in Schedule 3 (2) (b), to the department.

(3) In case the department is satisfied that there exists any circumstance as mentioned in the restrictive clause of Sub-Section (1), it may cancel the registration of any design.

Provided that:-

The department shall, before cancelling the registration of such design, provide reasonable opportunity to the design-holder to show cause if any, why the registration of his design should not be cancelled.

14A. Term of Design.

The title of the person in whose name a design has been registered under Section 14 shall remain valid for a period of five years from the date of registration thereof, except when it is renewed under Section 23B.

15 PUNISHMENT FOR CONTRAVENTION OF SECTION 12

In case any person contravenes the provisions or Sub-Section (2) of Section 12, or operates a design the registration of which has been canceled by the department, he may be punished with a fine not exceeding Rs 800, as well as confiscation of all articles and goods connected with such offense, on the

order of the department.

Trade Marks

16. ACQUISITION OF TITLE TO TRADE MARKS

(1) Any person who acquires, under this act, title to the trade-mark of his business, after having it registered in the department under Section 18.

(2) No person shall use a trade-mark registered in the name of any other person under section 18, without the written permission of the latter, or operate such trade-mark by imitating it in such a manner as to deceive the general public.

17 APPLICATION FOR REGISTRATION OF TRADEMARK

(1) Any person wishing to have the trademark of his business registered under Section 18 shall submit to the department an application according to the specimen form indicated in Schedule 1(c), along with four copies of such trade-mark.

(2) The person submitting applications under Sub-Section (1), shall pay an application fee as specified in Schedule 3(3) (a) to the department.

18 REGISTRATION OF TRADEMARK

(1) In case any person files an application under Section 17 for registration of trademark, the department shall register such trademark in the name of the applicant on the specimen form indicated in Schedule 2 (c),

Provided that in case it is felt that such trade-mark may hurt the prestige of any individual or institution or adversely affect the public conduct or morality or undermine the national interest or the reputation of the trade-mark of any other person, or in case such trade-mark found to have already been registered in the name of another person, it shall not be registered

(2) For obtain a certificate as mentioned in Sub-Section (1), the applicant shall pay registration fees as specified in Schedule 3 (3) (b) to the department

(3) The department may cancel the registration of any trade-mark, if it is satisfied that any of the circumstances indicated in the restrictive clause of Sub-Section (1) exist.

Provided that the department shall, before cancelling the registration of any trademark in this name, provide a reasonable opportunity to the holder of the trademark to show cause if any, why his trademark should not be cancelled.

18A. Classification of Goods and Services For the Person of Trade-Mark Registration

- (1) For the purpose of registering trade-marks related to any goods or services, His Majesty's Government may classify such goods or services by notification in the Nepal Rajapatra.
- (2) Separate applications must be submitted to register trade-marks of goods or services placed in different categories.
- (3) The trade-mark registered for goods or services in one category/under Sub-Section (1) may be registered for goods or services under another category.

18B. Prohibition to Use Trade-marks

No trade-mark may be used as a registered trade-mark without registering it at the department.

18C. Time Limit for Use of Trade-marks

In case a trade-mark registered at the department is not brought into use within one year from the date of registration thereof, the department shall conduct necessary inquiries and cancel such registration.

18D. Term of Trade-Marks

The title of the person in whose name a trade-mark has been registered under Section 18 shall remain valid for a period of seven years from the date of registration thereof, except when it is renewed under Section 238.

19 PUNISHMENT FOR ILLEGAL USE OF TRADE-MARKS

In case any one violates Sub-Section (2) of Section 16, or brings into use a trade-mark which has been cancelled under Sub-Section (3) of Section 18, or violates Section 18B, no one may be punished with a fine not exceeding 1000, as well as confiscation of all articles and goods connected with such offense, on the orders of the department.

Miscellaneous

20 RIGHT TO APPOINT AGENT

Any person may appoint an agent or legal practitioner for the purpose of taking any action which he is required to take under this act, and all actions taken by such agent or legal practitioner shall be deemed to have been taken by him personally.

21 (Repealed on October 18, 1987).

21A. Publication of Registered Designs and Trade-Marks

(1) The Department shall publish the designs registered under Section 14 and the trade-marks registered under Section 18, as well as particulars of their renewal or cancellation, for information of the public.

2) Any one who has any objection to the particulars published under Sub-Section (1) may file a complaint to the department within a period of 35 days from the date of publication of such particulars. The department shall take necessary actions after holding inquiries into such complaints.

21B. Title Not to be valid Unless Registered in Nepal

The title to any patent, design or trade-mark registered in a foreign country shall not be valid in Nepal unless it is registered in Nepal by the concerned person.

21C. Registration of Foreign patents, Designs and Trade-Marks.

The department may register patents, designs and trade-marks registered in foreign countries without conducting any enquiries if an application is filed for their registration along with certificates of their registration in foreign countries.

21D. Use of Designs and Trade-Marks May be Permitted

(1) In case any one wishes to allow others to make use of a design or trade-mark registered in his name at the department, both parties must submit a joint application to the department clearly mentioned the matter, along with the prescribed fees.

(2) In case an application is received under Sub-Section (1), the department may grant approval for the use of such design or trade-mark by the other person.

3) In case the department grants permission for the use of design on trade-mark under Sub-Section (2), the title to the concerned design or trade-mark shall be transferred to the person who has been permitted to make use of such design or trade-mark.

22 DEPARTMENT MAINTAIN REGISTER

The department shall maintain separate registers of patents, designs and trade-marks, indicating therein registration or cancellation thereof effected under this act.

23 APPLICATION FOR AND REGISTRATION AND RENEWAL OF PATENTS, DESIGNS AND TRADE-MARKS ALREADY REGISTERED IN FOREIGN COUNTRIES

(1) Notwithstanding anything contained in Sections 4, 7, 13, 14, 17, and 18, while registering or arranging for the registration of any patent, design and trade-marks already registered in foreign countries, a fee double the amount of the fee prescribed for application and registration in Schedule 3 shall be charged in equivalent convertible foreign currency determined on the basis of the current rate of exchange.

(2) While renewing a patent, design and trade-mark registered under Sub-Section (1), a fee double the amount of the fee prescribed for renewal in Schedule 3 shall be charged in convertible foreign currency determined on the basis of the current rate of exchange.

23A. Prohibition to Register in Foreign Countries without Registration in Nepal.

(1) Patents, designs and trade-marks of good produced in Nepal shall not be permitted to be register in foreign countries unless they are registered in Nepal.

(2) In case any one registers any patent, design and trade- mark in foreign countries in contravention of Sub- Section (10), he may be punished with a fine not according Rs 5000 as well is contiscation of all goods produced under such patent, design or trade-mark, on the orders of the department.

23B. Precedure Relating to Renewal of Patents, Designs and Trade- Marks

(1) A patent, design or trade-mar holder must renew his patent, design or trade-mark within a period of 35 days from the date of expiry of the turn for which he is entitled to use the patent, design or trade-mark under Section 8,

Section 14A or Section 18D by submitting an application in the form mentioned in Schedule 2 (d), 2(e) and 2(f) respectively and paying the fee motioned in Schedule 3.

(2) (A patent, design or trade-mark) may be renewed by paying a fine of Rs 100 within six months after the expiry of the time-limit for renewal according to Sub-Section (1).

(3) Notwithstanding anything contained in Sub-Section (1) and 92), a patent may be renewed not more than two times for a period of seven years at a time, a design not more than two times for a period of five years at a time, and a trade-mark any number of times for a period of seven years at a time.

24 COPY OF CERTIFICATE

In case the certificate of registration of any patent, design or trade-mark is lost, a copy thereof may be obtained from the department on payment of a fee the prescribed amount.

25 COMPENSATION

In case any person whose patent, design or trademark is registered under this act, actually suffers any losses as a result of any other person contravening the provisions of this act in respect to such patent, design or trade-mark, the department may have the appropriate amount of trade-mark, the department may have the appropriate amount of such losses recovered from such offender in the form of compensation.

26 REGISTRATION UNDER THIS ACT.

The patents, designs and trade-marks registered prior to the commencement of this act under the patent, design and trademarks law enacted in 1936, shall be deemed to have been registered under this act, with effect from the date of its commencement.

26A. Power to have Alterations in Rates of Fees

His Majesty's Government may make alterations in the amount of fees prescribed in Schedule 3 by notification in the Nepal Rajapatra.

27 APPEAL.

Any person who is not satisfied with the order issued by the department under this Act may file an appeal with the Zonal Court within 35 days.

28 REPEAL

The patent, design and trademark law of 1936 has been repealed.

Schedule 1(A)

Specimen Form of Application For
Registration of Patent

To

.....
.....

Since I am/We ar the inventor/s of I/we hereby apply, attaching herewith the principle/formaula/and maps and drawings containing all particulars, as well as the application fee, for the registration of its patent. I/we hereby request you to register the patent in my name/our names and issue to me/us a certificate thereof.

Witnesses: Signature of the Applicant

1.
2. Address

Date

Schedule 1(B)

Specimen Form of Application For Registration of Design

To,

....
....

Since I/we have manufactured am/are arranging for the manufacture of according to the design attached hereto, I/We hereby submit an application, along with the maps and drawings containing full particulars thereof, four pieces of samples, and the application fee, requesting the registration of the design. I/We hereby request you to register the design in my name/our names and then issue to me/us a certificate thereof.

Witnesses: Signature of the Applicant

1.

2. Address:

Date:

Schedule 1 (C)

Spacing Form of Application For Registration of Trade-Mark

To,

.....

.....

Since I/we intend to affix/have been affixing the trade-mark attached here to on...., I/we hereby apply for the registration of that trade-mark along with four samples thereof and the application fee. I/we hereby request you to register the trade-mark in my name/our names and issue a certificate thereof to me/us.

Witnesses: Signature of the Applicant

1.

2. Address

Date:

Schedule 2 (A)

Spaceman Form of certificate of Registration of Patent

His Majesty's Government

..... Ministry

..... Department

Certificate No. Date:

Certificate of Registration of Patent

The patent of which has been invented by has been registered under Section 7 of the 1965 patent, Design and Trade-Mark act, and this certificate has been issued according

.....
Director-General

Date of Renewal Date on which the signature and seal
Renewed term expires of the Renewing
Authority

Schedule 2 (B)
Specimen Form of Certificate of Registration of Design His Majesty's
Government

..... Ministry

..... Department

Certificate No. Date

Certificate of Registration of Design

The design of manufactured/or arranged for the manufacture thereof by... has sen registered under Section 14 of the 1965 patent, Design and Trade-Mark Act, and this certificate has been issued accordingly.

.....
Director General

Dat of Renewal date on which the Signature and Seal
Renwed tern Expires of the Renewing
Authority

Schedule 2 (C)

Specimen form of Certificate of Registration Trade-Mark

His Majesty's Government

.....Ministry

.....Department

Certificate No. Date:

Certificate of Registration of Trade-Mark

The trade-mark affixed/to be affixed in by.... has been registered under Section 18 of the 1965 patent, Design, and Trade-Mark Act, and this certificate has been issued accordingly.

.....
Director-General.

Date of Renewal Date on which the Signature and Sea of
Renewed Tern Expires the Renewing
Authority

Schedule 2 (D)

Specimen Form of Application For the Renewal of Patent

To,
.....
.....

Since the duration of the registration of the patent of registered by me/us on... has expired,

I/we hereby request you for the renewal thereof. The renewal fee is enclosed

Signature of the Applicant

.....

Address:

Date:

Schedule 2 (E)

Specimen Form of Application For Renewal of Design

Since the duration of the registration of the design of registered by me/us on.. has expired, I/We hereby request you for the renewal thereof. The renewal fee is enclosed.

Signature of the Applicant

.....

Address:

Date:

Schedule 2 (F)

Specimen Form of application for Renewal of Trade-Mark

To,

.....

.....

Since the duration of the registration of the trade-mark being affixed by us in ... by registering it on... has expired, I/We hereby request you for the renewal thereof. The renewal fee is enclosed.

Signature of the Applicant

.....

Address:

Date:

Application Registration, and Renewal Fees In Respect to Patents, Designs and Trade-marks

(1) Patent

(a) Application fee - Rs 100

(b) Registration fee - Rs 1000

(c) Renewal fee - Rs 300

(2) Design

(a) Application fee - Rs 100

(b) Registration fee - Rs 700

(c) Renewal fee - Rs 200

(3) Trade-Mark

(a) Application fee - Rs 100

(b) Registration fee - Rs 1600

(c) Renewal fee - Rs 150

Ministry of Industry

Nepal Rajapatra, Vol. 37, No. 35, Poush 6, 2044 (December 21, 1987)

In exercise of the power conferred by Section 2 (c) of the 1965 Patent, Design, and Trade-Mark Act, HMG has proscribed fees as follows for following purposes as mentioned in that act:-

(1) For the purpose of Sub-Section (2) of Section 7A of the Act, Rs 200 for inspection particulars, sketch, or design of any patent, and Rs 400 for obtaining the copies thereof.

(2) For the purpose of Sub-Section 93) of Section 9 of the Act, Rs 1000 for transferring the registration of a patent.

(3) Rs 700 for transfer of designs, and Rs 400 for transfer of trade-marks, according to Sub-Section (1) of Section 21D of the act.

