

PATENTS.

No. 38 of 1946.

An Act to amend the *Patents Act* 1903-1935, and for other purposes.

[Assented to 14th August, 1946.]

[Date of commencement, 11th September, 1946.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title
and citation.

1.—(1.) This Act may be cited as the *Patents Act* 1946.

(2.) The *Patents Act* 1903-1935* is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Patents Act* 1903-1946.

2. After section thirty-eight of the Principal Act the following section is inserted:—

Publication of
complete
specifications.

“38A.—(1.) After a complete specification has been lodged, the Commissioner shall publish in *The Australian Official Journal of Patents, Trade Marks and Designs* a notification that the complete specification is open to public inspection and thereupon the application, complete specification and provisional specification (if any) shall be open to public inspection.

“(2.) When a complete specification has become open to public inspection in pursuance of the last preceding sub-section it shall be deemed to have been published.

“(3.) The application of this section shall extend to complete specifications lodged before the date of commencement of this section, except complete specifications which have become open to public inspection before that date or in respect of which the applications have lapsed, or have been refused, abandoned or withdrawn, before that date.”

* Act No. 21, 1903, as amended by No. 17, 1909; No. 19, 1910; No. 24, 1921; No. 76, 1930; No. 70, 1932; No. 57, 1933; No. 45, 1934; and No. 16, 1935.

3. Section thirty-nine of the Principal Act is amended by adding at the end thereof the following sub-section :—

“(2.) Nothing in the last preceding sub-section shall require the Commissioner to refer an application and provisional specification to an examiner until the complete specification has been lodged.”

Examiner to report as to compliance with prescribed conditions.

4. Section fifty of the Principal Act is amended by omitting all the words after the word “manner”.

Acceptance to be advertised.

5. Section fifty-two of the Principal Act is repealed and the following section inserted in its stead :—

“52. Where an application in respect of which a complete specification has not been lodged has lapsed, or has been abandoned or withdrawn, the application and provisional specification shall not at any time be open to public inspection or be published.”

Provisional specification not to be published in certain cases.

6. Section fifty-four of the Principal Act is amended by omitting the word “acceptance” (wherever occurring) and inserting in its stead the word “publication”.

Effect of publication of complete specifications.

7. Section ninety-one A of the Principal Act is repealed and the following section inserted in its stead :—

“91A.—(1.) Where any person, by means of circulars, advertisements or otherwise threatens any person with any action or proceedings for infringement of a patent, or other like proceedings, then whether the person making the threats is or is not entitled to or interested in a patent, or is or is not interested in an application for a patent, any person aggrieved thereby may bring an action against him and may obtain a declaration to the effect that the threats are unjustifiable and an injunction against the continuance of the threats, and may recover such damages (if any) as he has sustained thereby, unless the person making the threats satisfies the court that the acts in respect of which the proceedings were threatened constitute or if done would constitute—

Groundless threats of legal proceedings.

(a) an infringement of a patent in respect of a claim in the specification which is not shown by the plaintiff to be invalid ; or

(b) an infringement of rights arising from the publication of the complete specification in respect of a claim therein which is not shown to be one which would be invalid if a patent had been granted in respect thereof.

“(2.) Nothing in this section shall render any solicitor or patent attorney, in respect of any act done by him in his professional capacity on behalf, and with the written or telegraphed authority, of his client, liable to any action or proceeding under this section, provided that the solicitor or patent attorney produces the authority for inspection by the person threatened or satisfies the court that the authority was received by him but has been inadvertently lost or destroyed.”

8. After section one hundred and twelve A of the Principal Act the following section is inserted :—

False representation as to patents and patented articles.

“ 112B.—(1.) A person shall not falsely represent that he or any other person is the patentee of an invention.

Penalty : One hundred pounds.

“(2.) A person shall not falsely represent that any article sold by him is patented in Australia or is the subject of an application for a patent in Australia.

Penalty : One hundred pounds.

“(3.) For the purposes of this section—

(a) a person shall be deemed to represent that an article is patented in Australia if there are stamped, engraved or impressed on, or otherwise applied to, the article the word ‘ patent ’ or ‘ patented ’, the words ‘ provisional patent ’, or any other word or words expressing or implying that a patent for the article has been obtained in Australia ; and

(b) a person shall be deemed to represent that an article is the subject of an application for a patent in Australia if there are stamped, engraved or impressed on, or otherwise applied to, the article the words ‘ patent applied for ’, ‘ patent pending ’ or any other word or words implying that an application for a patent for the article has been made in Australia.”

International arrangements for protection of inventions.

9. Section one hundred and twenty-one of the Principal Act is amended—

(a) by omitting the second proviso to sub-section (1.) ;

(b) by adding at the end of sub-section (3.) the words “ and must be accompanied by a complete specification ” ; and

(c) by omitting sub-section (5.).

Provisions with respect to damages for infringement in certain cases.

10. Where a patent is granted upon an application made under section one hundred and twenty-one of the Principal Act and the specification accompanying that application became open to public inspection before the date of commencement of this section, the patentee shall not be entitled to recover damages for infringements happening prior to the date of commencement of this section or the date of acceptance of the application and complete specification, whichever is the earlier.

Certain orders not affected.

11. Nothing in the Principal Act as amended by this Act shall affect the operation of any order continued in force by regulation three of the National Security (Industrial Property) Regulations or made under regulation five of those Regulations.