

Act A863
Patents (Amendment) Act 1993

Long Title & Preamble

An Act to amend the Patents Act 1983.

BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

Section 1. Short title and commencement.

This Act may be cited as the **Patents (Amendment) Act 1993** and shall, subject to subsection 45(2), come into force on such date as the Minister may appoint by notification in the *Gazette*, and the Minister may appoint different dates for the coming into force of different provisions of this Act.

Section 2. Amendment of section 3.

Section 3 of the Patents Act 1983(Act 291), which is referred to in this Act as the "principal Act", is amended -

(a) by inserting, after the definition of "Examiner", the following definition:

' "filing date" means the date recorded by the Registrar as the filing date under section 28;';

(b) by deleting the definition of "Minister";

(c) by inserting, before the definition of "patented invention", the following definition:

' "owner of the patent" or "owner of a patent" means the person for the time being recorded in the Register as the grantee of a patent;';

(d) by inserting, after the definition of "patented product", the following definitions:

' "prescribed" means prescribed by regulations made under this Act;

"priority date" means the date prescribed in section 27A;

"process" includes an art or a method;

"product" means any thing which appears in tangible form, and includes any apparatus, article, device, equipment, handicraft, implement, machine, substance and composition;';

(e) in the definition of "Registrar" by deleting the words "and includes any Deputy Registrar of Patents or Assistant Registrar of Patents".

Section 3. Amendment of section 4.

Section 4 of the principal Act is amended -

(a) by substituting for subsection (2) the following subsection:

"(2) The Board shall consist of the following members:

(a) the Secretary-General of the Ministry charged with the responsibility for industrial property, who shall be the Chairman;

(b) a Deputy Chairman, who shall be appointed by the Minister from amongst persons who, in the opinion of the Minister, by reason of their knowledge and experience would be of substantial service to the development of industrial property;

(c) a representative of the Ministry charged with the responsibility for industrial property, to be appointed by the Secretary-General of that Ministry;

(d) a representative of the Ministry charged with the responsibility for industry, to be appointed by the Secretary-General of that Ministry;

(e) a representative of the Ministry charged with the responsibility for science and technology, to be appointed by the Secretary-General of that Ministry;

(f) a representative of the National Scientific Council for Research and Development, to be appointed by that Council;

(g) a representative of the representing research institutes, to be appointed by the Minister;

(h) a representative of the institutions of higher learning, to be appointed by the Minister; and

(i) not more than three other persons whom the Minister considers fit and proper persons to be members of the Board, to be appointed by the Minister.";

(b) in subsection (3), by substituting for the words ", other than a member appointed under paragraph (b) or (c) of subsection (2)," the words "appointed under paragraph (b), (g), (h) or (i) of subsection (2)".

Section 4. Amendment of section 5.

Section 5 of the principal Act is amended -

(a) in subsection (1), by substituting for the words ", other than a member appointed under paragraph (a) of subsection (2) of section 4, appoint another person from the same body or" the words "appointed under paragraph (g), (h) or (i) of subsection (2) of section 4 appoint another person";

(b) by inserting, after subsection (1), the following subsection:

"(1A) Another person from the same Ministry or body as a member appointed under paragraph (c), (d), (e), or (f) of subsection (2) of section 4 may be appointed by the respective appointing authorities mentioned in those paragraphs to be that member's alternate and such alternate member may attend the meetings of the Board in place of that member if that member is for any reason unable to attend."

Section 5. Amendment of section 10.

The principal Act is amended by substituting for section 10 the following section:

" 10. Patent Information service.

There shall be a patent information service which provides information to the public upon payment of the prescribed fee."

Section 6. Amendment of section 14.

Section 14 of the principal Act is amended -

(a) in subsection (2) -

(i) in paragraph (a), by substituting for the words "by written publication or, in Malaysia," the words "by written publication,";

(ii) by deleting the words "filing date or, where appropriate," wherever they appear;

(b) by inserting, after subsection (3), the following subsection:

"(4) The provisions of subsection (2) shall not exclude the patentability of any substance or composition, comprised in the prior art, for use in a method referred to in paragraph (d) of subsection (1) of section 13, if its use in any such method is not comprised in the prior art."

Section 7. Amendment of section 17.

The principal Act is amended by substituting for section 17 the following section:

"17. Definition.

For the purposes of this Part and any regulations made under this Act in relation to this Part, "utility innovation" means any innovation which creates a new product or process, or any new improvement of a known product or process, which can be made or used in any kind of industry, and includes an invention."

Section 8. Amendment of section 17A.

Subsection 17A(2) of the principal Act is amended by deleting the figures and punctuation mark "12,".

Section 9. New sections 17B and 17C.

The principal Act is amended, in Part IVA, by inserting, after section 17A, the following sections:

" 17B. Conversion from an application for a patent into an application for a certificate for a utility innovation, and *vice versa*.

(1) An application for a patent may be converted into an application for a certificate for a utility innovation.

(2) An application for a certificate for a utility innovation may be converted into an application for a patent.

(3) A request to convert an application for a patent into an application for a certificate for a utility innovation or to convert an application for a certificate for a utility innovation into an application for a patent shall be filed by the applicant and shall comply with regulations made under this Act.

(4) A request for conversion under this section shall be filed not later than six months from the date the Registrar makes known to the applicant the report made by the Examiner in accordance with subsection (1) or (2) of section 30.

(5) A request for conversion under this section shall not be entertained unless the prescribed fee has been paid to the Registrar.

(6) An application which has been converted shall be deemed to have been filed at the time the initial application was filed.

17C. Patent and certificate for a utility innovation cannot both be granted for the same invention.

(1) If an applicant for a patent has also -

(a) made an application for a certificate for a utility innovation; or

(b) been issued with a certificate for a utility innovation,

and the subject-matter of the application for a patent is the same as the subject-matter of the application mentioned in paragraph (a) or of the certificate mentioned in paragraph (b), a patent shall not be granted until the application mentioned in paragraph (a) has been withdrawn or the certificate mentioned in paragraph (b) has been surrendered.

(2) If an applicant for a certificate for a utility innovation has also -

(a) made an application for a patent; or

(b) been granted a patent,

and the subject-matter of the application for a certificate for a utility innovation is the same as the subject-matter of the application mentioned in paragraph (a) or of the patent mentioned in paragraph (b), a certificate for a utility innovation shall not be granted until the application mentioned in paragraph (a) has been withdrawn or the patent mentioned in paragraph (b) has been surrendered."

Section 10. Amendment of section 18.

Section 18 of the principal Act is amended by inserting, after subsection (3), the following subsection:

"(4) If two or more persons have separately and independently made the same invention, and each of them has made an application for a patent, the right to a patent for that invention shall belong to the person whose application has the earliest priority date."

Section 11. Amendment of section 19.

The English language text of section 19 of the principal Act is amended in the proviso thereto by deleting the word "also".

Section 12. Amendment of section 25.

The principal Act is amended by substituting for section 25 the following section:

" 25. Withdrawal of application.

An applicant may withdraw his application at any time during its pendency by submitting a declaration in the prescribed form to the Registrar, and such withdrawal may not be revoked."

Section 13. Amendment of section 26B.

Section 26B of the principal Act is amended -

(a) in subsection (1), by inserting, after the word "may", the words ", within the prescribed time, ";

(b) in subsection (2), by deleting the words "the filing date and, where appropriate,".

Section 14. Amendment of section 27.

Section 27 of the principal Act is amended -

(a) in subsection (1) -

(i) by inserting, after the words "any international", the words "treaty or";

(ii) by inserting, after the word "filed", the words ", during the period of twelve months immediately preceding the filing date of the application containing the declaration,";

(iii) by substituting for the words "the said Convention" the words "the said international treaty or Convention";

(b) by inserting, after subsection (1), the following subsection:

"(1A) The period of twelve months mentioned in subsection (1) may not be extended under the provisions of section 82.";

(c) in subsection (3), by inserting, after the words "in the", the words "treaty or";

(d) in the national language text, by substituting for the word "penetapan" wherever it appears the word "akuan".

Section 15. New section 27A.

The principal Act is amended by inserting, after section 27, the following section:

" 27A. Priority date.

(1) Subject to subsection (2), the priority date of an application for a patent is the filing date of the application.

(2) Where an application contains the declaration mentioned in section 27, the priority date of the application shall be the filing date of the earliest application whose priority is claimed in that declaration."

Section 16. Amendment of section 29.

The principal Act is amended by substituting for section 29 the following section:

" 29. Preliminary examination.

(1) Where an application for a patent has a filing date and is not withdrawn, the Registrar shall examine the application and determine whether it complies with the requirements of this Act and the regulations made under this Act which are designated by such regulations as formal requirements for the purposes of this Act.

(2) If the Registrar, as a result of the examination under subsection (1), finds that not all the formal requirements are complied with, he shall give an opportunity to the applicant to make any observation on such finding and to amend the application within the prescribed

period so as to comply with those requirements, and if the applicant fails to do so the Registrar may refuse the application."

Section 17. New section 29A.

The principal Act is amended by inserting, after section 29, the following section:

" 29A. Request for substantive examination or modified substantive examination.

(1) If an application for a patent has been examined under section 29 and is not withdrawn or refused, the applicant shall file, within the prescribed period, a request for a substantive examination of the application.

(2) If a patent or other title of industrial property protection has been granted to the applicant or his predecessor in title in a prescribed country outside Malaysia or under a prescribed treaty or Convention for an invention which is the same or essentially the same as the invention claimed in the application, the applicant may, instead of requesting for a substantive examination, request for a modified substantive examination.

(3) A request for a substantive examination or a modified substantive examination shall be made in the prescribed form and shall not be deemed to have been filed until the prescribed fee has been paid to the Registrar and any other prescribed requirement has been complied with.

(4) The Registrar may require the applicant to provide, at the time of filing a request for a substantive examination -

(a) any prescribed information or prescribed supporting document concerning the filing of any application for a patent or other title of industrial property protection filed outside Malaysia by such applicant or his predecessor, in title with a national, regional or international industrial property office;

(b) any prescribed information concerning the results of any search or examination carried out by an International Searching Authority under the Patent Cooperation Treaty, relating to the same or essentially the same invention as that claimed in the application for which the request for a substantive examination is being filed.

(5) If the applicant -

(a) fails to file either a request under subsection (1) for a substantive examination or a request under subsection (2) for a modified substantive examination; or

(b) fails to provide the information or document referred to in subsection (4) as required by the Registrar,

within the prescribed period, the application for a patent shall, subject to subsection (6), be deemed to be withdrawn at the end of that period.

(6) Notwithstanding subsection (5), the Registrar may, upon the request of the applicant, grant a deferment of the filing of a request for examination referred to in subsection (1) or (2) or a deferment of the provision of the information or document referred to in subsection (4), and such deferment may be granted only on the grounds that -

(a) the patent or title referred to in subsection (2) has not been granted or is not available; or

(b) the information or document referred to in subsection (4) would not be available,

by the expiration of the prescribed period for the filing of a request under subsection (1) or (2).

(7) No deferment shall be granted under subsection (6) unless the request for such deferment is filed before the expiration of the prescribed period for the filing of a request under subsection (1) or (2) and no deferment may be sought nor granted for a period greater than that prescribed in the regulations made under this Act.

(8) Without prejudice to the power of the Registrar to grant a deferment, the period prescribed for the purposes of this section may not be extended under the provisions of section 82."

Section 18. Amendment of section 30.

The principal Act is amended by substituting for section 30 the following section:

" 30. Substantive examination or modified substantive examination.

(1) Where a request for substantive examination has been filed under subsection (1) of section 29A, the Registrar shall refer the application to an Examiner who shall -

(a) determine whether the application complies with those requirements of this Act and the regulations made under this Act which are designated by such regulations as substantive requirements for the purposes of this Act; and

(b) report his determination to the Registrar.

(2) Where a request for a modified substantive examination has been filed under subsection (2) of section 29A, the Registrar shall refer the application to an Examiner who shall -

(a) determine whether the application complies with those requirements of this Act and the regulations made this Act which are designated by such regulations as modified substantive requirements for the purposes of this Act; and

(b) report his determination to the Registrar.

(3) If the Examiner reports, in accordance with subsection (1) or (2), that any of the requirements referred to in subsection (1) or (2), as the case may be, are not complied with, the Registrar shall give the applicant an opportunity to make observations on the report and to amend the application so as to comply with those requirements, within the prescribed period, and if the applicant fails to satisfy the Registrar that those requirements are complied with, or to amend the application so as to comply with them, the Registrar may refuse the application.

(4) The Registrar may grant an extension of the prescribed period referred to in subsection (3) but such extension may be granted only once and no subsequent extension may be granted under the provisions of section 82.

(5) If the Examiner reports, in accordance with subsection (1) or (2), that the application, whether as originally filed or as amended, complies with the requirements referred to in subsection (1) or (2), as the case may be, the Registrar shall notify the applicant of that fact and, subject to subsection (6), shall process the application accordingly.

(6) Where two or more applications for a patent for the same invention having the same priority date are filed by the same applicant or his successor in title, the Registrar may on that ground refuse to grant a patent in pursuance of more than one of the applications.

(7) The Registrar may waive, as he deems fit, the requirement of referring an application or any part of it for substantive examination under subsection (1):

Provided that he shall notify in the *Gazette* his intention to waive such requirement and shall allow any party who would be aggrieved by such waiver to be heard on the matter."

Section 19. Amendment of section 31.

Section 31 of the principal Act is amended -

(a) in paragraph (2)(a), by inserting, after the word "Examiner's", the word "final";

(b) by inserting, after subsection (2), the following subsection:

"(2A) Where two or more persons have separately and independently made the same invention and each of them has made an application for a patent having the same priority date, a patent may be granted on each application.";

(c) in paragraph (3)(b), by deleting the words "together with copies of the search report".

Section 20. Amendment of section 32.

The principal Act is amended by substituting for section 32 the following section:

" 32. Register of Patents.

(1) The Registrar shall keep and maintain a register called the Register of Patents.

(2) The Register of Patents shall contain all such matters and particulars relating to patents as may be prescribed.

(3) The Register of Patents shall be kept in such form and on such medium as may be prescribed."

Section 21. New section 32A.

The principal Act is amended by inserting, after section 32, the following section:

"32A. Notice of a trust not to be registered

Notice of a trust, express, implied or "constructive, shall not be entered in the Register or be accepted by the Registrar."

Section 22. New sections 33A, 33B and 33C.

The principal Act is amended by inserting, after section 33, the following sections:

" 33A. Certified copies of or extracts from Register, etc. admissible as evidence in court.

(1)The Register shall be *prima facie* evidence of all matters required or authorized by this Act to be entered therein.

(2) Copies of or extracts from the Register, or of or from any document or publication in the Patent Registration Office, if certified by the Registrar in writing under his hand, shall be admissible in evidence in all courts without further proof or production of the original.

33B. Amendments to the Register.

(1) The Registrar may, on request made in the prescribed manner by the owner of a patent, amend the Register -

(a) by correcting any error in the name or address of the owner of the patent; or

(b) by entering any change in the name or address of the owner of the patent.

(2) Where the Register has been amended under this section, the Registrar may require the certificate of grant of the patent to be submitted to him, and may -

(a) revoke the certificate of grant of the patent and issue a new certificate of grant of the patent; or

(b) make any consequential amendments in the certificate of grant of the patent as are rendered necessary by the amendment of the Register.

(3) Notwithstanding any other provision of this Act or the regulations made under this Act, no fee shall be payable by the owner of a patent in respect of a request to correct any error in the name or address of such owner unless such error is caused or contributed to by such owner.

33C. Court may order rectification of the Register.

(1) The Court may, on the application of any aggrieved person, order the rectification of the Register by directing -

(a) the making of any entry wrongly omitted from the Register;

(b) the expunging or amendment of any entry wrongly made in or remaining in the Register; or

(c) the correcting of any error or defect in the Register.

(2) Notice of every application under this section shall be served on the Registrar who shall have the right to appear and be heard, and who shall appear if so directed by the Court.

(3) Unless otherwise directed by the Court, the Registrar, in lieu of appearing and being heard, may submit to the Court a statement in writing signed by him -

- (a) giving particulars in relation to the matter in issue;
- (b) of the grounds of any decision given by him affecting the matter in issue;
- (c) of the practice of the Patent Registration Office in like cases; or
- (d) of such other matters relevant to the issues and within his knowledge as Registrar, as he thinks fit,

and such statement shall be deemed to form part of the evidence in Court.

(4) A sealed copy of an order under this section shall be served on the Registrar who shall, upon receipt of the order, take such steps as are necessary to give effect to the order."

Section 23. Amendment of section 35.

Section 35 of the principal Act is amended -

(a) in subsection (1), by substituting for the colon after the word "grant" a full stop and by deleting the proviso to that subsection;

(b) by inserting, after subsection (2), the following subsection:

"(3) If the prescribed annual fee is not paid in accordance with subsection (2), the patent shall lapse, and a notice of the lapsing of the patent for non-payment of any annual fee shall be published in the *Gazette*."

Section 24. New section 35A.

The principal Act is amended in Part VI by inserting, after section 35, the following section:

" 35A. Reinstatement of a lapsed a patent.

(1) Within two years from the date on which a notice of the lapsing of a patent is published in the *Gazette* -

- (a) the owner of the patent or his successor in title; or
- (b) any other person who would, if the patent had not lapsed, have been entitled to the patent,

may apply to the Registrar in the prescribed form to have the patent reinstated.

(2) The Registrar may reinstate a patent on an application made under subsection (1) - .

- (a) upon payment of all annual fees due and of a prescribed surcharge for reinstatement; and

(b) upon being satisfied that the nonpayment of annual fees was due to accident, mistake or other unforeseeable circumstances.

(3) Where the Registrar reinstates a lapsed patent, he shall cause notice of the reinstatement to be published in the *Gazette*.

(4) The reinstatement of a lapsed patent shall not prejudice the rights acquired by third parties after it is notified in the *Gazette* that the patent has lapsed and before it is notified in the *Gazette* that the patent has been reinstated.

(5) The Minister may make regulations to provide for the protection or compensation of persons who have exploited or taken definite steps, by contract or otherwise, to exploit a patent after it is notified in the *Gazette* that the patent has lapsed and before it is notified in the *Gazette* that the patent has been reinstated, but any such protection shall not extend beyond such exploitation of the lapsed patent as such persons have availed themselves of or have taken definite steps to avail themselves of.

(6) No proceedings shall be taken in respect of an infringement of a patent committed after it is notified in the *Gazette* that the patent has lapsed and before it is notified in the *Gazette* that the patent has been reinstated."

Section 25. Amendment of section 37.

Section 37 of the principal Act is amended -

(a) in the national language text, in subsection (1), by substituting for the words "tidaklah boleh" the word "hendaklah";

(b) in the national language text, in subsection (2), by substituting for the word "hendaklah" the word "tidaklah"; and

(c) in subsection (5), by inserting, after the word "limited", the words "by the provisions of section 35A,".

Section 26. Amendment of section 38.

Subsection 38(1) of the principal Act is amended by deleting the words "filing or, where applicable, the".

Section 27. Amendment of section 40.

The national language text of section 40 of the principal Act is amended -

(a) by inserting, after the word "Dengan", the word "tiadanya"; and

(b) by deleting the word "tiadanya" appearing after the words "pihak-pihak itu".

Section 28. Amendment of section 43.

The national language text of subsection 43(1) of the principal Act is amended by substituting for the words "permohonan bagi" the word "penggunaan".

Section 29. Amendment of section 49.

The national language text of subsection 49(1) of the principal Act is amended -

(a) in paragraph (a) -

(i) by substituting for the word "pengemukaan" the word "pengeluaran";

(ii) by substituting for the words "permohonan bagi" the word "penggunaan";

(iii) by deleting the word "dikemukakan"; and

(b) in paragraph (b), by substituting for the word "dikemukakan" the word "dikeluarkan".

Section 30. Amendment of section 49A.

Subsection 49A (1) of the principal Act is amended by deleting the words "filing date or, where appropriate,".

Section 31. Amendment of Part XI.

The national language text of Part XI of the principal Act is amended by substituting for the words "PEMBATALAN", "Pembatalan", "pembatalan", "membatalkan", "dibatalkan" and "terbatal" the words "PENTAKSAHAN", "Pentaksahan", "pentaksahan", "mentaksahkan", "ditaksahkan", dan "tak sah", respectively.

Section 32. Amendment of section 56.

Section 56 of the principal Act is amended -

(a) in subsection (2) -

(i) by deleting the word "or" at the end of paragraph (c);

(ii) by substituting for the colon at the end of paragraph (d) the words "; or";

(iii) by inserting, after the paragraph (d), the following paragraph:

" (e) that incomplete or incorrect information has been deliberately provided or caused to be provided to the Registrar under subsection (4) of section 29A by the person to whom the patent was granted or by his agent."; and

(iv) by deleting the proviso; and

(b) by inserting, after subsection (2), the following subsection:

"(2A) Notwithstanding subsection (2), the Court shall not invalidate the patent on the ground mentioned in paragraph (d) of subsection (2) if the patent has been assigned to the person to whom the right to the patent belongs."

Section 33. Amendment of section 64.

Subsection 64(3) of the principal Act is amended by substituting for the word "revoked" the word "invalidated".

Section 34. Amendment of section 65.

The national language text of section 65 is amended -

(a) in the marginal note, by substituting for the words "di mana paten telah digunakan" the words "bahawa paten telah dipohon";

(b) in subsection (1), by substituting for the word "digunakan" the word "dipohon"; and

(c) in subsection (3) -

(i) by substituting for the words "belum selesai" the word "dinantikan"; and

(ii) by substituting for the words "telah digunakan" wherever they appear the words "telah dipohon".

Section 35. Amendment of section 74.

The national language text of subsection 74(5) of the principal Act is amended by substituting for the words "sahaja perlu" the word "mungkin".

Section 36. Amendment of section 75.

The national language text of subsection 75(1) of the principal Act is amended by substituting for the words "dalam pembicaraan" the words "dengan dapat didengar oleh".

Section 37. Amendment of section 79.

The principal Act is amended by substituting for section 79 the following section:

" 79. Power of Registrar to amend patent application.

(1) The Registrar may, upon a request made by an applicant for a patent in accordance with regulations made under this Act, amend the applicant's patent application, or any document submitted at the Patent Registration Office in connection with the application, for the purpose of correcting a clerical error or an obvious mistake.

(2) Every request under subsection (1) shall be accompanied by the prescribed fee."

Section 38. New section 79A.

The principal Act is amended by inserting, after section 79, the following section:

" 79A. Power of Registrar to amend patent.

(1) The Registrar may, upon a request made by the owner of a patent in accordance with regulations made under this Act, amend the description, the claim or claims, or the drawings, of the patent, or amend any other document associated with the patent, for the purpose of correcting a clerical error or an obvious mistake or for any other reason acceptable to the Registrar.

(2) The Registrar shall not make an amendment under this section if the amendment would have the effect of disclosing a matter which extends beyond that disclosed before the amendment or if the amendment would have the effect of extending the protection conferred at the time of grant of the patent.

(3) The Registrar shall not make an amendment under this section if there are pending before any Court proceedings in which the validity of the patent may be put in issue.

(4) Every request under subsection (1) shall be accompanied by the prescribed fee.

(5) Notwithstanding subsection (4), no fee shall be payable by the owner of a patent in respect of a request to correct a mistake or an error in any document issued by the Patent Registration Office unless such mistake or error is caused or contributed to by such owner."

Section 39. Amendment of section 82.

Section 82 of the principal Act is amended by substituting for the word "Where" the words "Subject to subsection (1A) of section 27, subsection (8) of section 29A and subsection (4) of section 30, where," .

Section 40. Amendment of section 83.

Subsection 83(1) of the principal Act is amended by deleting the words "the registration of".

Section 41. New section 83A.

The principal Act is amended by inserting, after section 83, the following section:

" 83A. Certificate by the Registrar.

The Registrar may certify, by writing under his hand, that an entry, matter or thing required by or under this Act to be made or done, or not to be made or done, has or has not been made or done, as the case may be, and such certificate shall be *prima facie* evidence of the truth of the facts stated therein and shall be admissible in evidence in all courts."

Section 42. Amendment of section 84.

The national language text of paragraph 84(a) of the principal Act is amended by deleting the words "yang sebaliknya".

Section 43. Amendment of section 86.

Subsection 86(5) of the principal Act is amended by deleting the words "or institute or appear in a suit".

Section 44. Amendment of section 87.

Paragraph 87(2)(e) of the principal Act is amended by substituting for the words the application on the registration of patents" the words "applications for patents".

Section 45. Amendment of section 89.

(1) Section 89 of the principal Act is amended by substituting for paragraph (c) the following paragraph:

"(c) any certificate or grant issued or made, in respect of a patent, under the repealed laws and in force immediately prior to the coming into force of this Act shall remain in force -

(i) so long as the original patent remains in force in the United Kingdom; or

(ii) until the expiration of twenty years from the date of application,

whichever is the earlier."

(2) Paragraph 89(c) of the principal Act as amended in subsection (1) shall be deemed to be and to have always been an integral part of section 89 from the date of coming into force of the principal Act.

Section 46. Amendment of section 90.

(1) Section 90 of the principal Act is amended -

(a) in subsections (1) and (2), by inserting after the words "issue a certificate" the words "or make a grant";

(b) in subsections (1) and (2), by inserting after the words "such certificate" the word "or grant";

(c) in subsection (2), by inserting after the words "for a certificate" the words "or a grant";

(d) by deleting subsection (3).

(2) Every grant made in Sarawak before the coming into force of this section and purported to have been made under subsection 90(1) or 90(2) of the principal Act is hereby declared to have been lawfully and validly made notwithstanding the omission of an express reference to the making of such grant.

Section 47. Amendment of Second Schedule.

The Second Schedule to the principal Act is amended -

(a) in the modifications in column (2) in respect of section 14 -

- (i) by deleting the words "in Malaysia" in paragraph (2)(a); and
 - (ii) by deleting the words "filing date or, where appropriate," in paragraphs (2)(a) and (2)(b);
- (b) by deleting the words "Section 29" in column (1) and by deleting all the modifications in column (2) in respect of section 29;
- (c) by substituting for the modifications in paragraph 2 in column (2) in respect of section 32 the following modifications:
- '2. Substitute "certificate for utility innovations" for "patents".';
- (d) by inserting, after the reference in column (1) to section 32 and the modifications in column (2) in respect of section 32, the following provisions:
- 'Section 33B... Substitute "certificate for utility innovation" for "certificate of grant of the patent".';
- (e) in the modifications in column (2) in respect of section 35 -
- (i) by deleting the punctuation marks '."' at the end of the proviso to subsection (4); and
 - (ii) by inserting, after subsection (4), the following subsection:
 - '(5) If the annual fee is not paid in accordance with subsection (4) the certificate for the utility innovation shall lapse, and a notice of the lapsing of the certificate for non-payment of any annual fee shall be published in the *Gazette*."' ;
- (f) by substituting for paragraph 2 of the modifications in column (2) in respect of section 37 the following paragraph:
- '2. Delete ", by the provisions on compulsory licenses as provided in sections 51 and 52" in subsection (5).'

Section 48. Transitional and saving.

Nothing in this Act shall affect -

- (a) requests made before the date of coming into force of this Act for preliminary or substantive examinations and still pending immediately prior to the date of coming into force of this Act; and
- (b) preliminary or substantive examinations still pending immediately prior to the date of coming into force of this Act,

and the provisions of the principal Act and the regulations made under the principal Act shall continue to apply to such examinations as if the principal Act had not been amended by this Act.