

# PATENTS (AMENDMENT) BILL, 2023

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# PATENTS (AMENDMENT) BILL, 2023

## A BILL FOR AN ACT TO AMEND THE PATENTS ACT

### Enacted by the Parliament of The Bahamas

#### 1. Short title and commencement.

- (1) This Act, which amends the Patent Act, 2015 (*No. 40 of 2015*), may be cited as the Patents (Amendment) Act, 2023.
- (2) This Act shall come into operation on such day as the Minister has, by notice published in the Gazette, appointed for the coming into operation of the principal Act.

#### 2. Amendment of section 2 of the principal Act.

The principal Act is amended by the deletion and substitution of the following definition —

“**Registrar**” means the Registrar of the Intellectual Property Office and any reference to the Registrar shall be construed as including a reference to any officer discharging the functions of the Registrar;”.

#### 3. Amendment of section 3 of the principal Act.

Subsection section 3 of the principal Act is deleted and substituted as follows —

##### “3. Intellectual Property Office.

- (1) An office to be known as the Intellectual Property Office is hereby established under the supervision of the Minister responsible for Legal Affairs.
- (2) The Minister shall appoint a Registrar and such other officers to discharge the duties and responsibilities of the Intellectual Property Office as the Minister may deem appropriate.

- (3) The Registrar and such other officers that the Minister may designate by instrument in writing, shall be holders of a public office as addressed in the Constitution.
- (4) The Registrar shall submit a report at the end of each financial year on the operations of the Intellectual Property Office and the Minister shall present such report to Parliament.
- (5) The Minister may give such directions to the Registrar as the Minister may deem appropriate, in connection with the functions to be carried out by the Intellectual Property Office under this Act and under any other relevant Act.
- (6) The Registrar shall have responsibility for the Intellectual Property Office and for personnel and other activities of the Office and for the timely and efficient administration of all laws relating to intellectual property and shall —
  - (a) exercise the powers and perform the functions conferred by this Act and under any other law relating to intellectual property; and
  - (b) act under the general direction and supervision of the Minister.
- (7) The Registrar shall adopt a seal to be used to authenticate all certified documents issued by the Intellectual Property Office in a form approved by the Minister and impressions of such seal shall be judicially noticed and admitted in evidence.
- (8) The Minister may appoint or designate such Examiners as may be necessary for exercising the powers conferred and performing the functions required by or under this Act.
- (9) The provisions of this section shall apply to the role of the Registrar under any other law relating to intellectual property and no proceedings shall lie against the Registrar or any member of staff of the Intellectual Property Office in respect of any matter for which, by virtue of this section, the Registrar is not liable.
- (10) The Intellectual Property Office shall be open during normal business hours for the purpose of the transaction by the public of business under this Act.
- (11) Business done on any day after the specified hours of business, or on a day which is not a business day, shall be deemed to have been done on the next business day; and where the time for doing anything under this Act expires on a day which is not a business day, that time shall be extended to the next business day.”

**4. Amendment of section 11 of the principal Act.**

Section 11 of the principal Act is amended by the insertion immediately after subsection (2) of the following new subsection —

- “(3) A patent shall not be granted for an invention that is contrary to public order or morality.”.

**5. Insertion of new section 44A into the principal Act.**

The principal Act is amended by the insertion immediately after section 44 of the following new section 44A —

**“44A. Owner of patent may request Comptroller of Customs to treat imports as prohibited goods.**

- (1) Where goods which are being imported into the Bahamas infringe the rights granted to a patentee under this Act, the patentee may give notice in writing to the Comptroller of Customs of such infringement and request the Comptroller to treat the goods in issue as prohibited goods under the Customs Management Act.
- (2) The Comptroller of Customs shall not be obliged to act in respect of a notice presented in accordance with subsection 1, unless the Comptroller is satisfied that the patentee has presented information which demonstrates sufficient proof of the infringement.”.

**6. Amendment of section 48 of the principal Act.**

Section 48 of the principal Act is amended by the renumbering of the section as subsection (1) and the insertion immediately after subsection (1) of the following new subsection —

- “(2) Protection conferred by a patent shall not apply to anything in a design which serves solely to obtain a technical or functional result.”.

**7. Insertion of new section 75A into the principal Act.**

The principal Act is amended by the insertion immediately after section 75 of the following new section —

**“75A. Implementation of The Budapest Treaty.**

- (1) The Budapest Treaty and any regulations made thereunder shall have full effect when entered into.
- (2) Where the provisions of this Act conflict with those of the Budapest Treaty, the provisions of the Budapest Treaty shall prevail.

- (3) Where this Act does not provide for any matter governed by the Budapest Treaty, the provisions of the Treaty shall apply.”.

### **OBJECTS AND REASONS**

This Bill seeks to amend the Patents Act, 2015.

Clause 2 of the Bill seeks to amend section 2 of the Act to amend the definition of Registrar.

Clause 3 of the Bill seeks to amend section 3 to provide for the establishment of the Office of Intellectual Property Office, to be under the supervision of the Minister responsible for legal affairs.

Clause 4 of the Bill seeks to amend section 39 of the Act to provide that a design that is contrary to public order or morality is not registrable.

Clause 5 of the Bill of the Bill seeks to provide for a new section 44A into the principal Act to enable an owner of a patent to request the Comptroller of Customs to treat imports as prohibited goods.

Clause 6 of the Bill seeks to amend section 48 of the Act to make clear that protection conferred by a patent shall not apply to anything in a design which serves solely to obtain a technical or functional result, to the extent that it leave no freedom as regards arbitrary features of appearance.

Clause 7 of the Bill seeks to provide for the implementation of the Budapest Treaty when the Bahamas becomes a party thereto.