



**SAMOA**

## **INTELLECTUAL PROPERTY ACT 2011**

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# INTELLECTUAL PROPERTY ACT 2011

2011

No. 9

**AN ACT** to provide protection for intellectual property rights in Samoa which are marks, patents, innovation patents, plant breeder's rights, design rights, registered designs, geographical indications and layout designs of integrated circuits.

*[Assent date: 11 October 2011]*

*[Commencement date: 1 October 2012]*

**BE IT ENACTED** by the Legislative Assembly of Samoa in Parliament assembled as follows:

## PART 1 PRELIMINARY

**1. Short title and commencement** – (1) This Act may be cited as the Intellectual Property Act 2011.

(2) This Act commences on a date to be nominated by the Minister.

**2. Interpretation** – In this Act, unless the context otherwise requires:

“abstract” with respect to patents, means technical information required in order to understand how an invention works;

“adequate remuneration” means remuneration of any kind that is agreed to by the parties, and where agreement is not arrived at by the parties, is to be determined by the Minister upon receipt by him or her of relevant documentation or submissions by both parties;

“applicant” includes the person's predecessor in title;

“breeder” (*see section 61*);

“business” means any activity established primarily for the purpose of generating a profit, and includes an enterprise;

“collective association” (*see section 45(1)*);

“collective mark” (*see section 45(1)*);

“Convention country” means a country which is a member of the Paris Convention or other international agreements relating to intellectual property rights to which Samoa is a party;

“exploit” an innovation patented invention (*see section 27(3)*);

“to exploit” a patented invention (*see section 12(3)*);

“exploit” a registered layout-design (*see section 109(3)*);

“Government agency” means any public body as defined under section 2 of the Public Bodies (Performance and Accountability) Act 2001 and includes any person, whether incorporated or not, duly authorised in writing by the Government to act on its behalf;

- “industry” includes the handicraft, agriculture, fishery, pharmaceuticals and services industry;
- “innovation patent” (*see section 19*);
- “invention” means an idea of an inventor which permits in practice the solution to a problem in the field of technology;
- “inventor” means the person who actually devised the invention;
- “mark” (*see section 45(1)*);
- “member of UPOV” (*see section 61*);
- “Minister” means the Minister responsible for Commerce, Industry and Labour;
- “Ministry” means the Ministry responsible for Commerce, Industry and Labour;
- “Paris Convention” means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised from time to time;
- “plant” (*see section 61*);
- “plant breeder’s rights” (*see section 61*);
- “priority date” means the date of the earlier application that serves as the basis for the right of priority provided for in the Paris Convention;
- “registers” means the registers kept pursuant to section 119;
- “Registrar” means the Chief Executive Officer of the Ministry and includes any duly appointed delegate;
- “Registry” means the Intellectual Property Registry established under section 118;
- “repealed enactments” means the Acts repealed under section 138;
- “sign” (*see section 45(1)*);
- “test batches” in relation to patents means any part or portion of a patented product which may be used in order to carry out further research to understand the patented product or for the purpose of obtaining regulatory approval for the product;
- “trade name” means the name or designation identifying and distinguishing a business;
- “UPOV” (*see section 61*);
- “variety” (*see section 61*);
- “writing” in relation to any requirement under this Act for applications to be “in writing” includes electronic mail, telex, telegrams and any other electronically produced means of communication.

**3. Act to bind State** – This Act binds the State.

## **PART 2 PATENTS**

**4. Definition of “patent”** – (1) In this Act, “patent” means the title granted to protect an invention.

(2) An invention may be, or may relate to, a product or a process.

(3) The following, even if they are inventions, are excluded from patentability:

- (a) a discovery, scientific theory or mathematical method;
- (b) a scheme, rule or method for performing a mental act, playing a game or doing business;
- (c) diagnostic, therapeutic and surgical methods for the treatment of humans or animals (this provision does not apply to products for use in any of those methods);
- (d) inventions that are contrary to public order or morality;
- (e) plants and animals, other than micro-organisms;
- (f) essentially biological processes for the production of plants or animals, other than non-biological and microbiological processes;
- (g) inventions that are likely to cause serious environmental harm;
- (h) the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least 1 new reactant.

**5. Patentable inventions for the purpose of a standard patent**

– (1) An invention is patentable if:

- (a) it is new; and
- (b) involves an inventive step; and
- (c) is industrially applicable.

(2) An invention is new if it is not anticipated by prior art.

(3) Prior art consists of everything known or used, 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.

(4) For the purposes of subsection (3), disclosure to the public of the invention will not be taken into consideration if such disclosure occurred within 12 months preceding the filing date or, where applicable, the priority date of the application, and the disclosure was due to or in consequence of:

- (a) acts committed by the applicant or the applicant’s predecessor in title; or
- (b) an abuse committed by a third party with regard to the applicant or the applicant’s predecessor in title.

(5) An invention is considered as involving an inventive step if, having regard to the prior art relevant to the application claiming the

invention, it would not have been obvious to a person having ordinary skill in the art.

(6) An invention is industrially applicable if it can be made or used in any kind of industry.

**6. Right to patent** – (1) Subject to subsection (5), the right to a patent belongs to the inventor.

(2) When 2 or more persons have jointly made an invention, the right to the patent belongs to them jointly.

(3) When 2 or more persons have made the same invention independently of each other, the person whose application has the earliest filing date has the right to the patent, as long as the application is not withdrawn, abandoned or rejected.

(4) The right to a patent may be assigned, or may be transferred by succession.

(5) If an invention is made in execution of a commission or an employment contract, the right to the patent belongs to the person having commissioned the work or the employer unless a contractual provision says otherwise.

**7. Application for a patent** – (1) A person may file an application with the Registrar for a patent.

(2) An application must be:

- (a) in writing; and
- (b) accompanied by a prescribed fee.

(3) An application must contain the following:

- (a) the applicant's name, address and nationality including the details of any agents used by the applicant for this purpose;
- (b) each inventor's name;
- (c) a request for the grant of the patent;
- (d) a description of the invention including the title of the invention;
- (e) one or more claims and any drawings referred to in the description of any claim;
- (f) an abstract;
- (g) a statement stating whether or not the invention for which protection is claimed is based on knowledge available within any local or indigenous community whether from Samoa or elsewhere;
- (h) a statement disclosing the source and geographical origin of any biological material used for the invention;
- (i) a written authorisation of the agent appointing the representative of the applicant, if any.

(4) If the applicant is not the inventor, the request must be accompanied by a statement justifying the applicant's right to the patent.

(5) The description in subsection (3)(d) must:

- (a) disclose the invention in a manner which is clear and complete enough for the invention to be carried out by a person having ordinary skill in the art; and
- (b) show the best mode known to the applicant for carrying out the invention.

(6) A claim in subsection (3)(e) must:

- (a) define the matter for which protection is sought; and
- (b) be clear and concise; and
- (c) be fully supported by the description of the invention.

(7) Drawings submitted by an applicant under subsection (3)(e) must be provided to the Registrar if the Registrar thinks it is necessary for the understanding of the invention.

(8) The Registrar may use the description and the drawings required under subsection (3)(d) and (e) to interpret the claim.

(9) The Registrar must not take into account the abstract required under subsection (3)(f) for the purpose of interpreting the scope of the protection.

(10) Subject to subsection (11), if the application is based on or derived from biological material or knowledge available within any local or indigenous community the Registrar may direct the applicant to furnish evidence as to the applicant's title or authority to make use of such material or knowledge.

(11) The Registrar is only to direct an applicant for evidence under subsection (10) when the applicant makes a written statement that the invention for which protection is claimed is based on or derived from biological material or knowledge available within any local or indigenous community.

(12) If an applicant fails to provide evidence as directed by the Registrar under subsection (10), the Registrar may, cease to deal further with the application.

(13) The applicant may withdraw the application at any time during the period that he or she is being examined by the Registrar.

### **8. Unity of invention; amendment and division of application**

– (1) An application for a patent must relate to 1 invention only or to a group of inventions so linked as to form a single general inventive concept.

(2) Subject to subsection (3), an applicant may amend the application at any time during the examination process.

(3) Despite subsection (2), an amendment must not go beyond the disclosure required under section 7(5)(a) in the initial application.

(4) Subject to subsection (5), an applicant may divide an application (“divisional application”), at any time during the examination process.



(5) Despite subsection (4), the divisional application must not go beyond the disclosure required under section 7(5)(a) in the initial application.

(6) A divisional application is entitled to the filing date and, where applicable, the priority date of the initial application.

(7) 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) is not a ground for the invalidation of the patent.

**9. Information concerning corresponding foreign applications patents – (1)** A person applying for a patent must, upon request, provide the Registrar with the date and number of any application for a patent filed by the applicant abroad (“foreign application”) relating to the same or essentially the same invention as that claimed in the application filed with the registry.

(2) The applicant must, upon request, provide the Registrar with the following documents:

- (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 the foreign application;
- (c) a copy of any final decision rejecting the foreign application or refusing the grant requested in the foreign application;
- (d) a copy of any final decision invalidating the patent granted on the basis of the foreign application referred to in subsection (1).

**10. Filing date and examination – (1)** Subject to subsection (2), the Registrar must accord as the filing date, the date and time upon which the Registrar receives the application for a patent.

(2) Despite subsection (1), the Registrar must accord the filing date only when the application fee is paid and the requirements of section 7(2) to (4) are met.

(3) If an application does not fulfil the requirements under subsection (2), the Registrar may require the applicant to file a correction to the application.

(4) If a correction is made under subsection (3), the Registrar is to accord the filing date as being the date upon which he or she received the correction from the applicant.

(5) If no correction is made, the application must be treated as if it had not been filed.

(6) If the application refers to drawings which are not included in the application, the Registrar may request the applicant to provide the missing drawings.

(7) If the applicant complies with the request under subsection (6), the Registrar must accord as the filing date the date of receipt of the missing drawings.

(8) When an applicant fails to comply with a request under subsection (6), the Registrar must:

- (a) accord as the filing date the date of receipt of the application; and
- (b) treat any reference to the drawings as non-existent.

(9) After according a filing date, the Registrar must examine:

- (a) whether the application complies with the requirements of section 5; and
- (b) whether any information requested under section 9, has been provided.

(10) If the Registrar is of the opinion that the application complies with the requirements of subsection (9), the Registrar must take a decision as to whether the requirements of sections 4(2) and (3), 5, and 7(5) to (9) are fulfilled and for this purpose may cause the application to be examined.

(11) The Registrar must take into account, for the purposes of subsection (9):

- (a) the results of any international search report and any international preliminary examination report established under the Paris Convention in relation to the application;
- (b) any search and examination report submitted under section 9(2)(a) or a final decision submitted under section 9(2)(c) relating to the patent on a corresponding foreign application;
- (c) any search and examination report which was carried out upon the Registrar's request by an external search and examination authority.

**11. Grant of patent and changes in patents – (1)** If the Registrar is of the opinion that the application complies with the requirements of sections 4, 5, 7 and 10, the Registrar must grant the patent.

(2) If the Registrar grants a patent, the Registrar must:

- (a) record the patent in the Patents Register; and
- (b) issue to the applicant a certificate of the grant of the patent and a copy of the patent; and
- (c) make available copies of the patent to the public, on payment of the prescribed fee.

(3) Subject to subsection (4), the Registrar must, upon the request of the owner of the patent, make changes in the text or drawings of the patent in order to limit the extent of the protection conferred by it.

(4) Despite subsection (3), no change will be made if it results in the disclosure in the patent going beyond the disclosure contained in

the initial application required under section 7(5)(a) for which the patent was granted.

(5) When an applicant does not meet the requirements of section 10(9), the Registrar must:

- (a) refuse the application; and
- (b) notify the applicant in writing of the Registrar's decision.

**12. Rights conferred by patent – (1)** A person who is granted a patent under section 11(1) has the exclusive right to exploit the patent.

(2) Subject to sections 14, 15, 16 and 18, a person intending to exploit a patented invention in Samoa must first obtain the consent of the owner of the patent.

(3) In this Act, “to exploit” a patented invention means any of the following:

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

(4) Subject to subsection (5) and sections 14, 15, 16 and 18 the owner of a patent may institute court proceedings against any person who infringes the patent by performing, without the owner's consent, any of the acts referred to in subsection (3) or who performs acts which are likely to infringe the patent.

(5) The rights under the patent do not extend:

- (a) to acts in respect of articles which have been put on the market anywhere in the world by the owner of the patent or with the owner's consent; and
- (b) to the use of articles on aircraft, land vehicles or vessels of other countries which temporarily or accidentally enter the airspace, territory or waters of Samoa; and
- (c) to acts done only for experimental purposes relating to a patented invention; and
- (d) to acts performed by any person who in good faith, before the filing or, if 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 Samoa.

(6) The right of prior user referred to in subsection (5)(d) may be transferred together with the business, or with that part of the business, in which the use or preparations for the use have been made.

**13. Duration and maintenance fees – (1)** Subject to subsection (2) and section 126, a patent expires 20 years after the filing date of the application for the patent.

(2) In order to maintain the patent or patent application, a prescribed maintenance fee must be paid in advance every 5 years to the Registrar starting 5 years after the filing date of the application for grant of the patent.

(3) If the 5 yearly maintenance fee is not paid in accordance with the provisions of this subsection, the patent lapses.

**14. Exploitation by Government or authorised person – (1)** Subject to the provisions of this section, the Minister may decide that, even without the consent of the owner of the patent, a government agency or a third person designated by the Minister may exploit the invention.

(2) The Minister may only exercise the power under subsection (1) if:

- (a) the public interest so requires; or
- (b) the Minister has determined that—
  - (i) the manner of exploitation by the owner of the patent or a licensee is anti-competitive; and
  - (ii) the Minister is satisfied that the exploitation of the invention would remedy the practice.

(3) The exploitation of the invention under subsection (1) is:

- (a) limited to the purpose for which it was authorised; and
- (b) subject to the payment to the owner of adequate remuneration taking into account the economic value of the Minister's decision under subsection (1); and
- (c) when a decision has been taken under subsection (2)(b), the determination of adequate remuneration under subsection (3)(b) shall include consideration of the need to correct anti-competitive practices.

(4) The Minister must make a decision under subsection (1) only after hearing the owner of the patent and any interested person who wishes to be heard.

(5) The Minister may, upon receiving a request from any party, and after hearing any party wishing to be heard, vary the terms of the decision authorising the exploitation of the patented invention if the Minister considers that the circumstances justify the variation.

(6) Subject to subsection (7), the Minister must terminate an authorisation upon the request of the owner of the patent, if the Minister is satisfied:

- (a) that the circumstances which led to the decision have ceased to exist and are unlikely to recur; or

- (b) that the government agency or third person designated in the authorisation has failed to comply with the terms of the decision.

(7) Despite subsection (6), the Minister must not terminate the authorisation if the Minister is satisfied that there is a need for adequate protection of the legitimate interests of the government agency or third person designated in the authorisation.

(8) The authorisation granted under subsection (1) may only be transferred with the business of that person or with the part of the business within which the patented invention is being exploited.

(9) The authorisation must not exclude:

- (a) the conclusion of licence contracts by the owner of the patent; or
- (b) the continued exercise, by the owner of the patent, of the rights under section 12(1); or
- (c) the issue of a non-voluntary licence under section 16(1) and (2).

(10) Subject to subsection (11), a person intending to obtain the Minister's authorisation under this section must provide proof that:

- (a) the owner of the patent has received a request for a contractual licence; and
- (b) that the person has been unable to obtain a licence—
  - (i) on reasonable commercial terms and conditions; or
  - (ii) within a reasonable time.

(11) Despite subsection (10), proof will not be required in cases of national emergency, other circumstances of extreme urgency, for public non-commercial use or to remedy practices determined by the Minister to be anti-competitive.

(12) If authorisation is granted under circumstances mentioned in subsection (10), the owner of the patent must be notified of the Minister's decision as soon as reasonably practicable.

(13) The exploitation of the invention by the government agency or third person designated by the Minister must be predominantly for the supply of the market in Samoa, except where the exploitation is to remedy anti-competitive practices.

(14) The exploitation of an invention in the field of semiconductor technology can only be authorised for:

- (a) public non-commercial use; or
- (b) if a judicial or administrative body has determined that the manner of exploitation of the patented invention by the owner of the patent or the owner's licensee is anti-competitive and the Minister is satisfied that the issuance of the compulsory licence would remedy the practice.

(15) A decision of the Minister made under this section may be reviewed by the Supreme Court.

**(16)** In this section:

“any party” means:

- (a) the owner of the patent; or
- (b) the government agency; or
- (c) a third person authorised to exploit the patented invention;

“public interest” includes matters relating to national security, nutrition, health, or the development of other vital sectors of the national economy.

**15. Import of patented pharmaceutical products – (1)** Subject to the provisions of this section, the Minister may decide that, even without the consent of the owner of the patent, a Government agency or a third person designated by the Minister may import, offer for sale, sell, stock or use a patented pharmaceutical product in Samoa.

**(2)** The authorisation granted under subsection (1) must not include a right to export the patented pharmaceutical product out of Samoa.

**(3)** The Minister may only exercise the power under subsection (1) if the Minister has notified the Council for TRIPS of his or her intention to issue an authorisation under subsection (1).

**(4)** An authorisation granted under subsection (1) must include conditions addressing:

- (a) the acts authorised to be done in relation to the patented pharmaceutical product under the authorisation; and
- (b) the quantity of the patented pharmaceutical product covered by the authorisation; and
- (c) the duration of the authorisation; and
- (d) a requirement for the patented pharmaceutical product to be clearly identified as being imported under the authorisation through specific labelling or marking; and
- (e) any other terms or conditions as the Minister thinks fit having regard to the public health needs in Samoa.

**(5)** The Minister must make a decision under subsection (1) only after hearing the owner of the patent and any interested person who wishes to be heard.

**(6)** The Minister may, upon receiving a request from any party, and after hearing any party wishing to be heard, vary the terms of the decision authorising the exploitation of the patented invention if the Minister considers that the circumstances justify the variation.

**(7)** Subject to subsection (8), the Minister must terminate an authorisation upon the request of the owner of the patent, if the Minister is satisfied:

- (a) that the circumstances which led to the decision have ceased to exist and are unlikely to recur; or

- (b) that the Government agency or third person designated in the authorisation has failed to comply with the terms of the decision.

**(8)** Despite subsection (7), the Minister must not terminate the authorisation if he or she is satisfied that there is a need for adequate protection of the legitimate interests of the Government agency or third person designated in the authorisation.

**(9)** An authorisation granted under subsection (1) is non-exclusive and may only be transferred with the business of that person or with the part of the business within which the patented invention is being exploited.

**(10)** No remuneration shall be paid to the owner of a patent granted in relation to a patented pharmaceutical product where an authorisation has been granted under subsection (1), if such owner has been paid remuneration in another country for the production and export of the product the subject of the authorisation.

**(11)** Where no remuneration has been paid in the other country, then the authorisation is subject to the payment to the owner of adequate remuneration.

**(12)** The Minister shall as soon as practicable after the grant of an authorisation under this section give notice in writing to the owner of the patent of the grant of the authorisation and its terms and conditions.

**(13)** The authorisation must not exclude -

- (a) the conclusion of licence contracts by the owner of the patent; or
- (b) the continued exercise, by the owner of the patent, of the rights under section 12(1); or
- (c) the issue of a non-voluntary licence under section 16(1) and (2).

**(14)** A person intending to obtain the Minister's authorisation under this section must provide proof that:

- (a) the owner of the patent has received a request for a contractual licence; and
- (b) that he or she has been unable to obtain a licence—
  - (i) on reasonable commercial terms and conditions; or
  - (ii) within a reasonable time.

**(15)** A decision of the Minister made under this section may be reviewed by the Supreme Court.

**(16)** In this section:

“any party” means:

- (a) the owner of the patent; or
- (b) the Government agency; or
- (c) a third person authorised to exploit the patented invention.

“Council for TRIPS” means the World Trade Organization’s Council for Trade-Related Aspects of Intellectual Property Rights;

“pharmaceutical product” means any patented product, or product manufactured through a patented process, of the pharmaceutical sector needed to address public health problems and shall include ingredients necessary for their manufacture and diagnostic kits required for their use.

**16. Non-voluntary licences – (1)** The Registrar, upon the request of the owner of a later patent, may grant a non-voluntary licence if:

- (a) there is an earlier patent relating to the same or similar invention granted on the basis of an earlier filing or priority date; and
- (b) an invention claimed in a later patent cannot be exploited in Samoa without infringing the earlier patent; and
- (c) the invention claimed in the later patent involves an important technical advance of considerable economic importance.

(2) If a licence is issued under subsection (1), the Registrar, upon the request of the owner of the earlier patent, must issue a non-voluntary licence in respect of the later patent.

(3) If a licence is issued under subsection (1) or (2), the Registrar must provide for:

- (a) the scope and function of the licence; and
- (b) the amount of the remuneration to be paid to the owner of the patent; and
- (c) any conditions of payment.

(4) The issue of a non-voluntary licence is subject to payment of the prescribed fee.

(5) In this section:

“earlier patent” means a patent granted that is made in relation to the same or similar invention as a later patent; and

“later patent” means an application for a patent that is made in relation to the same or similar invention but made after an earlier patent.

**17. Invalidation – (1)** An interested person may apply to the Supreme Court to invalidate a patent.

(2) The Supreme Court must invalidate the patent if the applicant proves that:

- (a) any of the requirements of sections 5, and 7 to 10 are not fulfilled; or



(b) the owner of the patent is not the inventor or the inventor's successor in title.

(3) An invalidated patent, or claim or part of a claim, has no legal effect from the start.

(4) Subject to an appeal under subsection (5), the decision of the Supreme Court must be notified by the applicant to the Registrar who must record it in the registry at the earliest opportunity.

(5) A person affected by the invalidation of a patent may appeal to the Court of Appeal for a review of the Supreme Court's decision.

**18. Test batches of patented products** – (1) Despite section 12 and subject to subsection (2), test batches of a patented product may be produced without the consent of the patent owner 6 months before the expiry of the patent.

(2) Test batches must not be put on the market before the expiry date of the patent.

### **PART 3 INNOVATION PATENTS**

**19. Definition of “innovation patent”** – (1) In this Act, “innovation patent” means the title granted to protect an incremental or lower level invention.

(2) An innovation patent may be, or may relate to, a product or a process.

(3) The exclusions from patentability under section 43 apply to this Part.

**20. Patentable inventions for the purpose of an innovation patent** – (1) An invention qualifies for an innovation patent if it is:

- (a) new; and
- (b) industrially applicable.

(2) An invention is new for the purposes of an innovation patent if it is not anticipated by prior art.

(3) Prior art consists of everything known or used, 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.

(4) For the purposes of subsection (3), disclosure to the public of the invention will not be taken into consideration if such disclosure occurred within 12 months preceding the filing date or, where applicable, the priority date of the application, and the disclosure was due to or in consequence of:

- (a) acts committed by the applicant or the applicant's predecessor in title; or
- (b) an abuse committed by a third party with regard to the applicant or the applicant's predecessor in title.

(5) An invention is industrially applicable if it can be made or used in any kind of industry.

**21. Right to an innovation patent – (1)** The right to an innovation patent belongs to the inventor.

(2) When 2 or more persons have jointly made an invention, the right to the innovation patent belongs to them jointly.

(3) When 2 or more persons have made the same invention independently of each other, the person whose application has the earliest filing date has the right to the patent, as long as the application is not withdrawn, abandoned or rejected.

(4) The right to an innovation patent may be assigned, or may be transferred by succession.

(5) If an invention is made in execution of a commission or an employment contract, the right to the innovation patent belongs to the person having commissioned the work or the employer unless a contractual provision says otherwise.

**22. Application for an innovation patent – (1)** A person may file an application with the Registrar for an innovation patent.

(2) An application must be in writing and accompanied by a prescribed fee.

(3) An application must contain:

- (a) the applicant's name, address and nationality including the details of any agents used by the applicant for this purpose; and
- (b) each inventor's name; and
- (c) a request for the grant of the innovation patent; and
- (d) a description of the invention including the title of the invention; and
- (e) one or more claims and any drawings referred to in the description of any claim; and
- (f) an abstract; and
- (g) a statement stating whether or not the invention for which protection is claimed is based on knowledge available within any local or indigenous community whether from Samoa or elsewhere; and
- (h) a statement disclosing the source and geographical origin of any biological material used for the invention; and
- (i) a written authorisation of the agent appointing the representative of the applicant, if any.

(4) If the applicant is not the inventor, the request must be accompanied by a statement justifying the applicant's right to the innovation patent.

(5) The description in subsection (3)(d) must:

- (a) disclose the invention in a manner which is clear and complete enough for the invention to be carried out by a person having ordinary skill in the art; and
- (b) show the best mode known to the applicant for carrying out the invention.

(6) A claim in subsection (3)(e) must:

- (a) define the matter for which protection is sought; and
- (b) be clear and concise; and
- (c) be fully supported by the description of the invention.

(7) Drawings submitted by an applicant under subsection (3)(d) must be provided to the Registrar if the Registrar thinks it is necessary for the understanding of the invention.

(8) The Registrar may use the description and the drawings required under subsections (3)(d) and (e) to interpret the claim.

(9) The Registrar must not take into account the abstract required under subsection (3)(f) for the purpose of interpreting the scope of the protection.

(10) Subject to subsection (11), if the application is based on or derived from biological material or knowledge available within any local or indigenous community the Registrar may direct the applicant to furnish evidence as to the applicant's title or authority to make use of such material or knowledge.

(11) Despite subsection (10), the Registrar is only to direct an applicant for evidence under subsection (10), if the applicant makes a written statement that the invention for which protection is claimed is based on or derived from biological material or knowledge available within any local or indigenous community.

(12) When an applicant fails to provide evidence as directed by the Registrar under subsection (10), the Registrar may cease to deal further with the application.

(13) The applicant may withdraw the application at any time during the period that it is being examined by the Registrar.

### **23. Unity of invention; amendment and division of application**

– (1) An application for an innovation patent must relate to 1 invention only or to a group of inventions so linked as to form a single general inventive concept.

(2) Subject to subsection (3), an applicant may amend the application at any time during the examination process.

(3) Despite subsection (2), an amendment must not go beyond the disclosure required under section 22(5)(a) in the initial application.

(4) Subject to subsection (5), an applicant may divide an application ("divisional application"), at any time during the examination process.

(5) Despite subsection (4), the divisional application must not go beyond the disclosure required under section 22(5)(a) in the initial application.

(6) A divisional application is entitled to the filing date and, if applicable, the priority date of the initial application.

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

**24. Information concerning corresponding foreign applications for innovation patents – (1)** A person applying for an innovation patent must, upon request, provide the Registrar with the date and number of any application for an innovation patent filed by the applicant abroad (“foreign application”) relating to the same or essentially the same invention as that claimed in the application filed with the registry.

(2) The applicant must, upon request, provide the Registrar with the following documents:

- (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 innovation patent granted on the basis of the foreign application;
- (c) a copy of any final decision rejecting the foreign application or refusing the grant requested in the foreign application;
- (d) a copy of any final decision invalidating the innovation patent granted on the basis of the foreign application referred to in subsection (1).

**25. Filing date and formalities examination – (1)** Subject to subsection (2), the Registrar must accord as the filing date, the date and time upon which the Registrar receives the application for an innovation patent.

(2) Despite subsection (1), the Registrar must accord the filing date only when the application fee is paid and the requirements of sections 22(2) to (4) and 24 are met.

(3) If an application does not fulfil the requirements under subsection (2), the Registrar may require the applicant to file a correction to the application.

(4) If a correction is made under subsection (3), the Registrar must accord the filing date as being the date upon which he or she received the correction from the applicant.

(5) If no correction is made, the application must be treated as if it had not been filed.

(6) If the application refers to drawings which are not included in the application, the Registrar may request the applicant to provide the missing drawings.

(7) If the applicant complies with the request under subsection (6), the Registrar must accord as the filing date the date of receipt of the missing drawings.

(8) If an applicant fails to comply with a request under subsection (6), the Registrar must:

- (a) accord as the filing date the date of receipt of the application; and
- (b) treat any reference to the drawings as non-existent.

**26. Grant of innovation patent and changes in innovation patents** – (1) If the Registrar is of the opinion that the application complies with the requirements of section 20, the Registrar must grant the innovation patent.

(2) If the Registrar grants an innovation patent, the Registrar must:

- (a) record the innovation patent in the Innovation Patents Register; and
- (b) issue to the applicant a certificate of the grant of the innovation patent and a copy of the innovation patent; and
- (c) make available copies of the innovation patent to the public, on payment of the prescribed fee.

(3) Subject to subsection (4), the Registrar must, upon the request of the owner of the innovation patent, make changes in the text or drawings of the innovation patent in order to limit the extent of the protection conferred by it.

(4) Despite subsection (3), no change will be made where it results in the disclosure in the innovation patent going beyond the disclosure contained in the initial application required under section 22(3) for which the innovation patent was granted.

(5) When an applicant does not meet the requirements of section 20, the Registrar must:

- (a) refuse the application; and
- (b) notify the applicant in writing of the Registrar's decision.

**27. Rights conferred by innovation patent** – (1) A person who is granted an innovation patent under section 26(1), has the exclusive right to exploit the innovation patent.

(2) A person intending to exploit an innovation patented invention in Samoa must first obtain the consent of the owner of the innovation patent.

(3) In this Act, “to exploit” an innovation patented invention means any of the following:

- (a) if the innovation patent has been granted in respect of a product—
  - (i) making, importing, offering for sale, selling or using the product; or

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

(4) Subject to subsection (5), the owner of an innovation patent may institute court proceedings against any person who infringes the innovation patent by performing, without the owner's consent, any of the acts referred to in subsection (3) or who performs acts which are likely to infringe the innovation patent.

(5) The rights under the innovation patent do not extend:

- (a) to acts in respect of articles which have been put on the market anywhere in the world by the owner of the innovation patent or with the owner's consent; or
- (b) to the use of articles on aircraft, land vehicles or vessels of other countries which temporarily or accidentally enter the airspace, territory or waters of Samoa; or
- (c) to acts done only for experimental purposes relating to an innovation patented invention; or
- (d) to acts performed by any person who in good faith, before the filing or, if priority is claimed, the priority date of the application on which the innovation patent is granted, was using the invention or was making effective and serious preparations for such use in Samoa.

(6) The right of prior user referred to in subsection (5)(d) may be transferred together with the business, or with that part of the business, in which the use or preparations for the use have been made.

**28. Invalidation – (1)** An interested person may apply to the Registrar to invalidate an innovation patent.

(2) The Registrar must invalidate the innovation patent if the applicant proves that:

- (a) the claimed invention did not qualify for an innovation patent; or
- (b) the description and the claims do not comply with the requirements of sections 20 and 22 to 25; or
- (c) any drawing which is necessary for the understanding of the invention has not been furnished; or
- (d) the owner of the innovation patent is not the inventor or his or her successor in title.

(3) An invalidated innovation patent, or claim or part of a claim, has no legal effect from the start.

(4) Subject to an appeal under subsection (5), the decision of the Registrar must be recorded in the registry at the earliest opportunity.

(5) A person affected by the invalidation of an innovation patent may appeal to the Court of Appeal for a review of the Supreme Court's decision.

**29. Innovation patents to expire** – Subject to section 126, an innovation patent expires, without possibility of renewal, at the end of the seventh year after the date of the filing of the application.

**30. Conversion of applications of patent or innovation patent** – (1) Subject to subsection (3), at any time before the grant or rejection of a patent, an applicant for a patent may, upon payment of the prescribed fee, convert his or her application into an application for an innovation patent, which is to be accorded the filing date of the initial application.

(2) At any time before the grant or rejection of an innovation patent, an applicant for an innovation patent may, upon payment of the prescribed fee, convert his or her application into a patent application, which is to be accorded the filing date of the initial application.

(3) Despite subsection (1), an application may not be converted under subsection (1) more than once.

#### **PART 4 DESIGNS**

**31. Definition of “design” and “creator”** – In this Part:

“design” means the design of any aspect of the shape, pattern or configuration (whether internal or external) of the whole or part of an article, but does not include:

- (a) a method or principle of construction; or
- (b) features of shape or configuration of an article which—
  - (i) are dictated solely by the function which the article has to perform; or
  - (ii) are dependent upon the appearance of another article of which the article is intended by the designer to form an integral part;

“creator”, in relation to a design, means the person who created it.

**32. Design right** – (1) A design right is a property right which subsists in accordance with this Part in an original design.

(2) A design is not original for the purposes of this Part if it is commonplace in the design field in question at the time of its creation.

(3) Design right subsists in a design only if the design qualifies for design right protection under section 35.

(4) Design right does not subsist unless and until the design has been recorded in a design document or an article has been made to the design.

(5) Design right does not subsist in a design which was so recorded, or to which an article was made, before the commencement of this Act.

**33. Ownership of design right** – (1) The creator is the first owner of any design right in a design which is not created under a commission or in the course of employment.

(2) When 2 or more persons have jointly made a design, the design right belongs to them jointly.

(3) Design right may be assigned, or may be transferred by succession.

(4) If a design is made in execution of a commission or an employment contract, the design right belongs to the person having commissioned the design or the employer unless a contractual provision says otherwise.

**34. Duration of design right** – Design right expires 15 years from the end of the calendar year in which the design was first recorded in a design document or an article was first made to the design, whichever first occurred.

**35. Qualification for design right protection** – The provisions of this Part concerning design right apply to:

- (a) designs of creators who are nationals of or have their permanent place of residence in Samoa; and
- (b) designs first created in Samoa, irrespective of the nationality or residence of their creators.

**36. Rights of design right owner and infringement** – (1) The owner of design right in a design has the exclusive right to:

- (a) reproduce the design—
  - (i) by making articles to that design; or
  - (ii) by making a design document recording the design for the purpose of enabling such articles to be made; and
- (b) make, sell or import articles incorporating the design, –

where such acts are undertaken for commercial purposes.

(2) Reproduction of a design by making articles to the design means copying the design so as to produce articles exactly or substantially to that design, and references in this Part to making articles to a design is to be understood accordingly.

(3) Design right is infringed by a person who, without the licence of the design right owner, does or authorises another to do, anything



which by virtue of this section is the exclusive right of the design right owner.

(4) Design right does not extend:

- (a) to acts in respect of articles which have been put on the market anywhere in the world by the owner of the design right or with the owner's consent; and
- (b) to the use of articles on aircraft, land vehicles or vessels of other countries which temporarily or accidentally enter the airspace, territory or waters of Samoa.

**37. Registrable design – (1)** A design is registrable if it is new.

(2) For the purposes of subsection (1), a design is new if it has not been disclosed to the public:

- (a) anywhere in the world by publication in tangible form; or
- (b) in Samoa, by description in writing or by use or in any other way, prior to the filing date or, if applicable, prior to the priority date of the application for registration.

(3) The following designs are not registrable:

- (a) contrary to public order or morality; or
- (b) based on matai titles, names of persons or Samoan villages, or religious words or symbols; or
- (c) identical with, or is an imitation of or contains as an element, an armorial bearing, flag and other emblem, a name or abbreviation or initials of the name of, or official sign or hallmark adopted by, any State, intergovernmental organisation or organisation created by an international convention, unless authorised by the competent authority of that State or organisation.

**38. Right to registration of design – (1)** The right to a design belongs to the creator.

(2) When 2 or more persons have jointly made a design, the right to the design belongs to them jointly.

(3) When 2 or more persons have made the same design independently of each other, the person whose application has the earliest filing date has the right to the design, as long as the application is not withdrawn, abandoned or rejected.

(4) The right to a design may be assigned, or may be transferred by succession.

(5) If a design is made in execution of a commission or an employment contract, the right to the design belongs to the person having commissioned the work or the employer unless a contractual provision says otherwise.

**39. Application for registration** – (1) An application for the registration of a registered design must be filed with the Registrar and be accompanied by the prescribed application fee.

(2) An application for registration of a registered design must contain all of the following:

- (a) the applicant's name, address and nationality including the details of any agents used by the applicant for this purpose;
- (b) each creator's name;
- (c) a request for registration of the design;
- (d) drawings, photographs or other adequate graphic representations of the article embodying the design;
- (e) a statement of the kind of products for which the design is to be used with reference to the classifications in Schedule 1;
- (f) a written authorisation of the agent appointing the representative of the applicant, if any.

(3) The application may be accompanied by a specimen of the article embodying the design, if the design is two-dimensional.

(4) If the applicant is not the creator, the application must be accompanied by a statement justifying the applicant's right to the registration of the design.

(5) Two or more designs may be the subject of the 1 application if they relate to the same classification in Schedule 1.

(6) An application may contain a request that the publication of the design, upon registration, be deferred for a period not exceeding 12 months from the date of filing or, if priority is claimed, from the date of priority, of the application.

(7) An applicant for the registration of a design may withdraw the application at any time during its examination.

**40. Examination and registration of design** – (1) If at the time of receipt, the applicant meets the requirements of section 39(1), the Registrar must accord the date of receipt of the application as the filing date.

(2) After according a filing date, the Registrar must examine the application for compliance with the requirements of section 39.

(3) If the Registrar is satisfied that the conditions referred to in subsection (2) are met, the Registrar must:

- (a) register the design in the Registered Designs Register;  
and
- (b) issue to the applicant a certificate of registration of the registered design.

(4) If the Registrar is satisfied that the conditions are not fulfilled, the Registrar must refuse the application and advise the applicant of the decision to refuse the application.

(5) If an application does not fulfil the requirements under section 39(2) to (4), the Registrar may require the applicant to file a correction to the application.

(6) If a correction is made under subsection (5), the Registrar must accord the filing date as being the date upon which he or she received the correction from the applicant.

(7) If no correction is made, the application must be treated as if it had not been filed.

**41. Applicant to be notified of non-complying application** – If the Registrar considers that an application does not comply with the requirements of this Act, the Registrar must:

- (a) inform the applicant; and
- (b) give the applicant an opportunity to respond, or to amend the application by correcting only those matters set out in section 39(2) to (4) within a time to be specified by the Registrar.

**42. Rights conferred by registration** – (1) A person who owns a registered design registered under section 40(3) has the exclusive right to exploit the registered design for commercial purposes.

(2) Exploitation of a registered design means the making, selling or importation of articles incorporating the registered design.

(3) A person intending to exploit a registered design in Samoa must first obtain the consent of the owner of the design.

(4) The rights under the registered design do not extend:

- (a) to acts in respect of articles which have been put on the market anywhere in the world by the owner of the registered design or with the owner's consent; and
- (b) to the use of articles on aircraft, land vehicles or vessels of other countries which temporarily or accidentally enter the airspace, territory or waters of Samoa.

(5) A registered design is infringed by a person who without the licence of the registered owner of the registered design does, or authorises another to do, anything which by virtue of this section is the exclusive right of the registered owner.

**43. Duration; Renewal** – (1) Subject to section 126, the registration of a registered design is for a period of 5 years from the filing date of the application for registration.

(2) The registration of a registered design may be renewed for 2 further consecutive periods of 5 years by the payment of the prescribed renewal fee.

**44. Invalidation** – (1) An interested person may request the Supreme Court to invalidate the registration of a registered design.

(2) The Supreme Court must invalidate the registration if the person requesting the invalidation proves that:

- (a) any of the requirements of sections 37 and 39 are not fulfilled; or
- (b) if the registered owner of the registered design is not the creator or the creator's successor in title.

(3) An invalidated registered design, or claim or part of a claim, has no legal effect from the start.

(4) Subject to an appeal under subsection (5), the decision of the Supreme Court must be notified to the Registrar who must record it in the Registered Designs Register at the earliest opportunity.

(5) A person affected by the invalidation of a registered design may appeal to the Court of Appeal for a review of the Supreme Court's decision.

## **PART 5**

### **MARKS AND COLLECTIVE MARKS**

**45. Definitions – (1)** For the purposes of this Act:

“collective association” means an incorporated body that has or is able to have members, and is:

- (a) constituted for the joint benefit of its members for the time being; and
- (b) so constituted that its membership at any time can be ascertained.

“collective mark” means a sign capable of:

- (a) being represented graphically; and
- (b) distinguishing the origin or any other common characteristic, including the quality, of goods or services of members of the collective association that is the owner of the sign from those of persons who are not members of the collective association.

“mark” means any sign capable of:

- (a) being represented graphically; and
- (b) distinguishing the goods or services of one person from another in the course of trade.

“sign” includes the following or any combination of the following, namely, any letter, word, name, signature, numeral, device, brand, heading, label, ticket, aspect of packaging, shape, colour, sound, scent or taste.

(2) In this Act, unless the context otherwise requires, every reference to:

- (a) the use of a sign in relation to goods is a reference to the use of the sign on, or in physical or other relation to, goods; and

- (b) the use of a sign in relation to services is a reference to the use of the sign in relation to the provision or availability of services; and
- (c) the use of a sign in relation to goods or services includes a reference to the audible use of the sign in relation to goods or services.

(3) References in this Act to use of a mark by the owner include use by a person other than the owner if that use is authorised by, and subject to, the control of the owner.

**46. Acquisition of the exclusive right to a mark** – The exclusive right to a mark is acquired by registration in accordance with the provisions of the Act.

**47. Registrability** – (1) A mark must not be registered:

- (a) subject to subsection (2), if it has no distinctive character; or
- (b) subject to subsection (3), if the use or registration of a mark is contrary to law, public order or morality; or
- (c) if the use or registration of a mark is likely to deceive or cause confusion, in particular as regards the geographical origin or nature or characteristics of the goods or services concerned; or
- (d) if it is identical with, or confusingly similar to, or is an imitation of or contains as an element, an armorial bearing, flag and other emblem, a name or abbreviation or initials of the name of, or official sign or hallmark adopted by, any State, intergovernmental organisation or organisation created by an international convention, unless authorised by the competent authority of that State or organisation; or
- (e) if it is identical with, or confusingly similar to, or constitutes a common translation of, a mark or trade name which is well known in Samoa for identical or similar goods or services of another person; or
- (f) if it (“the first mark”) is identical with, or confusingly similar to, or constitutes a common translation of, a mark that is registered in Samoa and well-known for goods or services which are not identical or similar to those in respect of which registration is applied for, if the use of the first mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the well-known mark and the interests of the owner of the well-known mark are likely to be damaged by such use; or

- (g) if it is identical to a mark belonging to a different proprietor and already on the register, or with an earlier filing or priority date—
  - (i) for the same goods or services; or
  - (ii) for similar goods or services, and its use is likely to deceive or confuse; or
- (h) if it is similar to a mark belonging to a different proprietor and already on the register, or with an earlier filing or priority date in respect of the same or similar goods or services, and its use is likely to deceive or confuse; or
  - (i) if it is based on matai titles, names of persons or Samoan villages, or religious words or symbols; or
  - (j) if it contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the mark for such goods in Samoa is of such a nature as to mislead the public as to the true place or origin; or
  - (k) if, in relation to a mark for wines or spirits, it contains or consists of a geographical indication identifying wines or spirits not having this geographical origin.

(2) Despite subsection (1)(a), a non-distinctive mark may still be registered if it becomes distinctive through use.

(3) Despite subsection (1)(b), the Registrar may register a mark even if use of the mark is restricted or prohibited under the Tobacco Control Act 2008.

**48. Application for registration** – (1) An application for the registration of a mark must be filed with the Registrar and accompanied by the prescribed fee.

(2) An application for the registration of a mark must contain:

- (a) the applicant's name, address and nationality including the details of any agents used by the applicant for this purpose; and
- (b) a request for registration of the mark; and
- (c) a reproduction of the mark; and
- (d) a list of the goods or services or both for which registration of the mark is requested, listed under the applicable class or classes of the International Classification in Schedule 2; and
- (e) a written authorisation of the agent appointing the representative of the applicant, if any.

(3) If a person, who claims to be the proprietor of several marks for the same goods or services or for goods or services of the same description within a single class, seeks to register those marks and the marks, although they resemble each other in material particulars, differ in respect of:

- (a) statements or representations as to the goods or services in respect of which the marks are used or proposed to be used; or
  - (b) statements or representations as to number, price, quality or names of places; or
  - (c) any other matter which is not distinctive and does not substantially affect the identity of the marks; or
  - (d) colour, –
- or in any 2 or more of those matters, the marks may be registered as a series in one registration.

**49. Filing date and examination** – (1) Subject to subsection (2), the Registrar must accord as the filing date, the date and time upon which the Registrar receives the application for a mark.

(2) Despite subsection (1), the Registrar must accord the filing date only when the application fee is paid and the requirements of section 48(2) are met.

(3) After according a filing date under this section, the Registrar must:

- (a) examine whether the application complies with the requirements of section 48; and
- (b) examine and determine whether the mark is a mark as defined in section 45 and is registrable under section 47.

**50. Acceptance and publication** – If the Registrar is satisfied that:

- (a) the application complies with the requirements of section 48; and
- (b) the mark is a mark as defined in section 45; and
- (c) the mark is registrable under section 47, –

the Registrar must accept the application and cause the application, as accepted, to be published in the Savali.

**51. Applicant to be notified of non-complying application** – If the Registrar considers that an application does not comply with the requirements of this Act, the Registrar must:

- (a) inform the applicant; and
- (b) give the applicant an opportunity to respond, or to amend the application by correcting only those matters set out in section 48 within a time to be specified by the Registrar.

**52. Revocation of acceptance** – The Registrar may revoke the acceptance of an application if:

- (a) the application was accepted because of an error or omission made by the Registrar; or

- (b) another application that relates to the mark has convention priority.

**53. Opposition – (1)** A person may, within 3 months from the date of publication under section 50, give written notice to the Registrar of opposition to the registration of the mark on the grounds that 1 or more of the requirements of sections 45 and 47 are not met as well as the following information:

- (a) the name and address for service of the opposing person;
- (b) if the opposing person has an agent, the agent's name;
- (c) a description or representation of the mark;
- (d) the number of the application;
- (e) each class of goods or services to which the opposition relates;
- (f) each ground of opposition.

**(2)** The Registrar must send a copy of the notice under subsection (1) to the applicant.

**(3)** The applicant must within 2 months from receiving the copy of the notice under subsection (1) send to the Registrar a written counter statement, duly executed by the applicant, showing the grounds on which the applicant relies and the following information:

- (a) the applicant's name and address for service;
- (b) if the applicant has an agent, the agent's name;
- (c) a response to the opposing person's ground of opposition, by admitting, denying or claiming lack of knowledge of, each assertion made in the grounds of opposition;
- (d) a brief statement of the grounds on which the applicant relies in support of the application for registration.

**(4)** If the applicant does not provide a counter-statement under subsection (3), the applicant is taken to have abandoned the application.

**(5)** If the applicant sends a counterstatement, the Registrar must, within 7 days of receiving the counterstatement, provide a copy of it to the person giving notice of opposition.

**(6)** Within 2 months of receiving a counter statement, the opposing person must:

- (a) file evidence in support of the notice of opposition; or
- (b) notify the Registrar that he or she does not intend to file evidence; or
- (c) notify the Registrar that he or she wishes to withdraw the application.

**(7)** The Registrar must decide whether the mark should be registered after:

- (a) hearing both parties (if they wish to be heard) at a venue determined by the Registrar; and
- (b) considering any evidence that may have been filed by any of the parties; and



(c) considering the merits of the case.

(8) A person who is aggrieved as a result of a decision of the Registrar under subsection (7), may appeal the decision to the Supreme Court.

**54. Withdrawal of application** – An applicant for the registration of a mark may withdraw the application at any time during its examination.

**55. Registration of mark** – (1) Subject to subsection (2), the Registrar must register a mark if the Registrar is satisfied that:

- (a) the application complies with requirements of section 48; and
- (b) the mark is a mark as defined in section 45; and
- (c) the mark is registrable under section 47.

(2) Despite subsection (1), the Registrar must not register a mark if:

- (a) the mark has been opposed within the period referred to in section 53; or
- (b) the registration of the mark has been opposed and the opposition has not been withdrawn or has not been decided in the applicant's favour.

(3) When the Registrar registers a mark under subsection (1), the Registrar must:

- (a) record the mark in the Trade Marks Register; and
- (b) issue to the applicant a certificate of registration of the mark.

(4) If an Applicant does not satisfy the requirements under subsection (1) the Registrar must refuse the application.

**56. Rights conferred by registration and infringement** – (1) A person who owns a mark registered under section 55 has the exclusive right to use the registered mark in relation to all or any of the goods or services in respect of which the mark is registered.

(2) The right under subsection (1) extends to the use of a sign similar to the registered mark and use in relation to goods and services similar to those for which the mark has been registered.

(3) A person infringes a registered mark if the person does not have the right to use the registered mark and uses as a mark in the course of trade, a sign:

- (a) identical with the registered mark in relation to any goods or services in respect of which the mark is registered;
- (b) identical with the registered mark in relation to any goods or services that are similar to any goods or services in respect of which the mark is registered, if that use would be likely to deceive or confuse;
- (c) similar to the registered mark in relation to any goods or services that are identical with or similar to any goods

or services in respect of which the mark is registered, if that use would be likely to deceive or confuse; or

- (d) identical with or similar to the registered mark in relation to any goods or services that are not similar to the goods or services in respect of which the mark is registered where the mark is well known in Samoa and the use of the sign takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the mark.

(4) The rights conferred by registration of a mark do not extend to acts in respect of articles which have been put on the market anywhere in the world by the registered owner or with the owner's consent.

(5) No registration under this Act is to interfere with any good faith use by a person of:

- (a) his or her own name; or
- (b) the name of his or her place of business; or
- (c) the name of the place of business of any of his or her predecessors in business; or
- (d) a sign which is a description of the character, quality, geographical origin or other characteristic of his or her goods or services; or
- (e) a sign to indicate the intended purpose of goods (in particular as accessories or spare parts) or services; or
- (f) a sign for the purposes of comparative advertising.

(6) Nothing in this section affects any right of action in relation to geographical indications and against any person for passing off goods as those of another person or the remedies relating to those actions.

**57. Duration and renewal** – (1) Subject to section 126, the registration of a mark is for a period of 10 years from the filing date of the application for registration.

(2) The registration of a mark may, upon request, be renewed for consecutive periods of 10 years upon the payment of the prescribed renewal fee.

(3) A renewal of registration may be made within 12 months before the expiry date of the registration.

(4) A prescribed late renewal fee will apply after the expiry date of the registration.

**58. Invalidity** – (1) An interested person may make a request to the Supreme Court for the registration of a mark to be invalidated.

(2) The Supreme Court must invalidate the registration of a mark if the person requesting the invalidation proves that any of the requirements of sections 45 and 47 are not fulfilled.

(3) An invalidated mark has no legal effect from the start.

(4) Subject to an appeal under subsection (5), the decision of the Supreme Court must be notified to the Registrar who must record it in the Trade Marks Register at the earliest opportunity.

(5) A person affected by the invalidation under this section may appeal to the Court of Appeal for a review of the Supreme Court's decision.

(6) After a review under subsection (5), if the Court of Appeal decides in favour of the person affected by the invalidation, the Registrar must restore the person's right to the mark in the Trade Marks Register.

**59. Removal on ground of non-use** – (1) Subject to subsections (2) and (3), any interested person may request the Registrar to remove a mark from the Trade Marks Register on the ground of non-use.

(2) The Registrar may remove a mark if satisfied that up to 1 month prior to filing the request the mark had, after its registration, not been the subject of genuine use by the registered owner or a licensee during a continuous period of not less than 3 years.

(3) A mark must not be removed if it is shown that:

- (a) special circumstances prevented the use of the mark; and
- (b) there was a good faith intention to use the mark.

(4) The use in subsection (3) includes use by licensees or authorised persons.

**60. Collective marks** – (1) Subject to subsections (2) and (3), sections 45 to 59 apply to collective marks.

(2) If an application is made for registration of a collective mark:

- (a) the registered owner must designate the mark as a collective mark and must provide a copy of the rules governing the use of the collective mark; and
- (b) the registered owner of a collective mark must notify the Registrar of any changes made in respect of the rules referred to in paragraph (a) within 1 month of the change being made.

(3) In addition to the grounds specified in section 58, the Supreme Court must invalidate the registration of a collective mark if the person requesting the invalidation proves –

- (a) that only the registered owner uses the mark; or
- (b) that the owner uses or permits its use in contravention of the rules referred to in subsection (2)(a); or
- (c) that the owner uses or permits its use in a manner liable to mislead or deceive the public as to the origin or any other common characteristics of the goods or services concerned.

**PART 6**  
**PLANT BREEDER'S RIGHTS**

**61. Definitions and application – (1)** In this Act:

“breeder” means:

- (a) the person who bred, or discovered and developed, a variety; or
- (b) the person who is the employer of a person under (a), or who has commissioned the person's work; or
- (c) the successor in title of the persons under (a) or (b), as the case may be.

“member of UPOV” means a State party to the UPOV Convention of 1961/Act of 1972 or the Act of 1978 or a Contracting Party to the 1991 Act;

“plant” means any variety of plant and includes a fungus;

“plant breeder's rights” means the rights granted under section 69;

“UPOV” means the International Union for the Protection of New Varieties of Plants founded by the International Convention for the Protection of New Varieties of Plants of 1961 and further mentioned in the Act of 1972, the Act of 1978 and in the 1991 Act;

“variety” means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be:

- (a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes; and
- (b) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and
- (c) considered as a unit with regard to its suitability for being propagated unchanged.

**(2)** The following, even if they are new plant varieties, are excluded from protection under this Part:

- (a) plant varieties that are contrary to public order or morality; or
- (b) plant varieties that are likely to cause serious environmental harm.

**(3)** This Act applies on the date of its commencement to all plant genera and species.

**62. National treatment – (1)** Without prejudice to the rights specified in this Act, citizens of a member of UPOV having their registered offices within the territory of a member of UPOV shall, insofar as the grant and protection of plant breeder's rights are

concerned, enjoy within Samoa, the same treatment as is accorded by this Act to the citizens of Samoa.

(2) All citizens of a member of UPOV shall comply with the conditions and formalities imposed on the citizens of Samoa.

(3) In this section “citizen” means, where the member of UPOV is a State, a national of that State and, where the member of UPOV is an intergovernmental organisation, a national of the States which are members of that organisation and includes a natural person or legal entity.

**63. Persons entitled to make application for plant breeders rights** – (1) Subject to subsection (2), an application for the grant of plant breeder’s rights in respect of a new variety may be made by or on behalf of any of the following persons and may be made by that person alone or jointly with anyone else who is a breeder of the new variety or his or her assignee:

- (a) a breeder or his or her assignee;
- (b) the Minister responsible for Agriculture, if the State is the breeder of the new variety or the breeder’s assignee;
- (c) the competent authority according to the laws of the country concerned, if the government of a reciprocating country is the breeder of the new variety or the breeder’s assignee.

(2) An application for the grant of plant breeder’s rights must be made only by the following persons if the State or that government, individual, company or body corporate is a breeder of the new variety concerned:

- (a) the State or the government of a reciprocating country;
- (b) an individual who is a citizen or resident of Samoa or a reciprocating country;
- (c) a company or body corporate which carries on business or has its principal office in Samoa or a reciprocating country.

**64. Application for plant breeder’s rights** – (1) A person may file an application to the Registrar for a right to breed a plant.

(2) An application must be in writing and accompanied by a prescribed fee.

(3) An application must contain:

- (a) the applicant’s name, address and nationality including the details of any agents used by the applicant for this purpose; and
- (b) information concerning the origins of the plant concerned and give the full name of the breeder; and
- (c) a request for the grant of the plant breeder’s rights; and
- (d) a description of the new variety of plant including the name of the new variety of plant; and

- (e) a sample of the new plant variety referred to in the description of any claim; and
- (f) a statement stating whether or not the new plant variety for which protection is claimed is based on a knowledge available within any local or indigenous community whether from Samoa or elsewhere; and
- (g) a written authorisation of the agent appointing the representative of the applicant, if any.

(4) If the applicant is not the breeder, the request must be accompanied by a statement justifying the applicant's right to the plant breeder's rights.

(5) The description in subsection (3)(e) must disclose the new plant variety in a manner which is clear and complete enough for the new plant variety to be recognised.

(6) A sample submitted by an applicant under subsection (3)(f) must be provided to the Registrar if he or she thinks it is necessary for the understanding of the new plant variety and must include samples of reproductive material necessary for the reproduction of the plant concerned in such quantities as the Registrar may require.

(7) The Registrar may use the description and the sample required under subsections (3)(e) and (f) to interpret the claim.

(8) Subject to subsection (10), if the application is based on or derived from knowledge available within any local or indigenous community the Registrar may direct the applicant to furnish evidence as to the applicant's title or authority to make use of such knowledge.

(9) The Registrar must only direct an applicant for evidence under subsection (8) if the applicant makes a written statement that the new plant variety for which protection is claimed is based on or derived from knowledge available within any local or indigenous community.

(10) If an applicant fails to provide evidence as directed by the Registrar under subsection (9), the Registrar may, cease to deal further with the application.

(11) The applicant may withdraw the application at any time during the period that it is being examined by the Registrar.

**65. Applicant to be notified of non-complying application** – If the Registrar considers that an application does not comply with the requirements of this Act, the Registrar must:

- (a) inform the applicant; and
- (b) give the applicant an opportunity to respond, or to amend the application by correcting only those matters set out in section 64 within a time to be specified by the Registrar.

**66. Publication of application** – If it appears to the Registrar that the plant concerned in an application is a new variety of a prescribed kind and the applicant is entitled to apply for plant breeder's rights in

respect of it, the Registrar must publish a notice in the Savali with the following particulars:

- (a) the name of the applicant;
- (b) the date of the application;
- (c) the proposed name of the plant concerned;
- (d) such particulars relating to the application and the plant concerned as may be prescribed or as the Registrar thinks appropriate.

**67. Filing date and examination – (1)** Subject to subsection (2), the Registrar must accord as the filing date, the date and time upon which the Registrar receives the application for a plant breeder's right.

(2) Despite subsection (1), the Registrar must accord the filing date only when the application fee is paid and the requirements of section 64(3) are met.

(3) The Registrar must examine any application under this Part for compliance with the provisions of sections 62 to 64.

(4) During examination, the Registrar may:

- (a) grow the variety; or
- (b) carry out other necessary tests; or
- (c) cause the growing of the variety; or
- (d) take into account the results of growing tests or other trials which have already been carried out.

(5) During examination, the Registrar may require the breeder to provide all necessary information, documents or material as the Registrar considers necessary in the circumstances.

**68. Provisional protection – (1)** Provisional protection is provided to safeguard the interests of the breeder during the period between the filing date of the application for the grant of a plant breeder's right and the grant of that right.

(2) The holder of a plant breeder's right shall at least be entitled to equitable remuneration from any person who, during the period provided in subsection (1), has carried out acts which, once the right is granted, require the breeder's authorisation as provided in section 74.

(3) Provisional protection shall only take effect on persons whom the breeder has notified of the filing of the application.

**69. Grant of plant breeder's rights and changes in rights – (1)** If the Registrar is of the opinion that the application complies with the requirements of sections 62 to 64 and the plant variety is:

- (a) new; and
- (b) distinct; and
- (c) uniform; and
- (d) stable, –

the Registrar must grant the plant breeder's rights.

(2) If the Registrar grants a plant breeder's right, the Registrar must:

- (a) record the right in the Plant Breeder's Rights Register; and
- (b) issue to the applicant a certificate of the grant of the plant breeder's right; and
- (c) make available copies of the plant breeder's rights to the public, on payment of the prescribed fee.

(3) Subject to subsection (4), the Registrar must, upon the request of the owner of the plant breeder's right, make changes in the description or samples of the new plant variety in order to limit the extent of the protection conferred by it.

(4) If an applicant does not meet the requirements of subsection (1), the Registrar must:

- (a) refuse the application; and
- (b) notify the applicant in writing of the Registrar's decision.

**70. Novelty** – The variety is taken to be new if, at the date of filing of the application for a plant breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety:

- (a) in Samoa, earlier than 1 year before the date of filing of the application; and
- (b) in a territory other than Samoa, earlier than 4 years or, for trees or vines, earlier than 6 years before that date.

**71. Distinctness** – (1) A variety is taken to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application.

(2) Subject to subsection (3), the filing of an application for the granting of a plant breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be taken to render that other variety a matter of common knowledge from the date of the application.

(3) Despite subsection (2), common knowledge is to be assumed only where the application leads to the granting of a plant breeder's right or to the entering of the other variety in the official register of varieties.

**72. Uniformity** – A variety is taken to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.



**73. Stability** – A variety is taken to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each cycle.

**74. Scope of plant breeder's rights** – (1) Subject to sections 75 and 76, the following acts in respect of the propagating material of the protected variety requires the consent of the breeder:

- (a) production or reproduction (multiplication);
- (b) conditioning for the purpose of propagation;
- (c) offering for sale;
- (d) selling or other marketing;
- (e) exporting;
- (f) importing;
- (g) stocking for any of the purposes mentioned in (a) to (d), above.

(2) A consent may be subject to conditions and limitations as may be specified in writing by the breeder.

(3) Subject to sections 75 and 76, the acts referred to in subsection (1) for harvested material, including entire plants and parts of plants, obtained through the unauthorised use of propagating material of the protected variety require the consent of the breeder, unless the breeder has had reasonable opportunity to exercise his or her right to the propagating material.

(4) Subsections (1) to (3) also apply to:

- (a) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety; and
- (b) varieties which are not clearly distinguishable in accordance with section 71 from the protected variety; and
- (c) varieties whose production requires the repeated use of the protected variety.

(5) A variety is taken to be essentially derived from another variety (“the initial variety”) when:

- (a) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety; and
- (b) it is clearly distinguishable from the initial variety; and
- (c) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

(6) Essentially derived varieties may be obtained by the selection of a natural or induced mutant, or of a somaclonal variant, the

selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

**75. Exceptions to breeder's rights** – The plant breeder's right shall not extend to:

- (a) acts done privately and for non-commercial purposes; or
- (b) acts done for experimental purposes; or
- (c) acts done for the purpose of breeding other varieties, and, except where the provisions of section 74(4) apply, acts referred to in section 74(1) to (3) in respect of such other varieties.

**76. Exhaustion of the breeder's rights** – (1) The plant breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of section 74(4) which has been sold or otherwise marketed by the breeder or with his or her consent anywhere in the world, or any material derived from that material, unless such acts:

- (a) involve further propagation of the variety in question; or
  - (b) involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.
- (2) In this section, "material" means, in relation to a variety:
- (a) propagating material of any kind; or
  - (b) harvested material, including entire plants and parts of plants; or
  - (c) any product made directly from the harvested material.

**77. Duration of plant breeder's rights** – (1) Subject to section 126, the term of the plant breeder's rights is 20 years from the date on which they were granted.

(2) The owner may apply to the Registrar to extend the period of protection beyond 20 years.

(3) Upon the receipt of an application under subsection (2), the Registrar may grant a further period of protection if the Registrar is satisfied that for reasons beyond the applicant's control the applicant has not been adequately remunerated by the grant of such rights.

(4) An extended period of protection may not exceed 5 years and is subject to the payment of a prescribed fee.

(5) An extension may be made subject to such conditions, if any, as the Registrar considers appropriate.

(6) A decision of the Registrar made under this section may be reviewed by the Supreme Court.

**78. Exploitation by Government – (1)** Subject to the provisions of this section, the Minister may decide that, even without the consent of the owner of a plant breeder's right, a government agency or a third person designated by the Minister may exploit the new plant variety.

(2) The Minister may only exercise the power under subsection (1) if the public interest so requires.

(3) The exploitation of the plant breeder's right is subject to the payment to the breeder of adequate remuneration.

(4) The Minister must make a decision under subsection (1) only after hearing the breeder's submissions, if any, on the matter and any interested person who wishes to be heard.

(5) The Minister may, upon receiving a request from any party, and after hearing any party wishing to be heard, vary the terms of the decision authorising the exploitation of the plant breeder's right if the Minister considers that the circumstances justify the variation.

(6) Subject to subsection (7), the Minister must terminate an authorisation upon the request of the breeder, if the Minister is satisfied that the circumstances which led to the decision have ceased to exist and are unlikely to recur.

(7) Despite subsection (6), the Minister must not terminate the authorisation if he or she is satisfied that there is a need for adequate protection of the legitimate interests of the government agency or third person designated the authorisation.

(8) A decision of the Minister made under this section may be reviewed by the Supreme Court.

(9) In this section "any party" means:

- (a) the breeder; or
- (b) the government agency; or
- (c) a third person authorised to exploit the plant breeder's right.

**79. Measures regulating commerce –** The plant breeder's right is independent of any measure to regulate the production, certification and marketing of material of varieties or the importing or exporting of such material.

**80. Variety denomination – (1)** A variety shall be designated by a denomination which will be its generic designation, and subject to subsection (4), no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the plant breeder's right.

(2) The denomination must:

- (a) enable the variety to be identified; and
- (b) not consist solely of figures except where this is an established practice for designating varieties; and

- (c) not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder; and
- (d) be different from every denomination which designates, in the territory of any member of UPOV, an existing variety of the same plant species or of a closely related species.

(3) The denomination of the variety is to be submitted by the breeder to the Registrar, and where it is found that the denomination does not satisfy the requirements of subsection (2), the Registrar must refuse to register it and shall require the breeder to propose another denomination within 12 months.

(4) Despite subsection (1), prior rights of third persons are not to be affected and, if by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, under subsection (7) is obliged to use it, the Registrar shall require the breeder to submit another denomination for the variety.

(5) A variety must be submitted to all members of UPOV under the same denomination and the Registrar shall register the denomination so submitted, unless it considers the denomination unsuitable, in which case, the Registrar shall require the breeder to submit another denomination.

(6) The Registrar must ensure that the authorities of the members of UPOV are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations and any such authority may address its observations, if any, on the registration of a denomination to the Registrar.

(7) A person who offers for sale or markets propagating material of a variety protected within Samoa is obliged to use the denomination of that variety, even after the expiration of the plant breeder's right in that variety, except where, under subsection (4), prior rights prevent such use.

(8) When a variety is offered for sale or marketed, it is permitted to associate a trademark, trade name or other similar indication with a registered variety denomination and if such an indication is so associated, the denomination must nevertheless be easily recognizable.

(9) The denomination shall be registered by the Registrar at the same time as the plant breeder's right is granted.

**81. Invalidation of plant breeder's right – (1)** An interested person may apply to the Supreme Court to invalidate a plant breeder's right.

- (2) A breeder's right is to be declared void when it is proven that:
  - (a) any of the requirements of this Part is not fulfilled; or
  - (b) that, where the grant of the plant breeder's right has been essentially based upon information and documents

furnished by the breeder, the conditions laid down in sections 72 and 73 were not complied with at the time of the grant of the breeder's right; or

- (c) that the plant breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

(3) No plant breeder's rights shall be declared void for reasons other than those specified under subsection (1).

**82. Cancellation of plant breeder's rights – (1)** A plant breeder's right may be cancelled if:

- (a) it is established that the conditions laid down in sections 72 and 73 are no longer fulfilled; and
- (b) after being requested to do so within 6 months—
  - (i) the breeder does not provide the Registrar with the information, documents or material which are necessary for verifying the maintenance of the variety; or
  - (ii) the breeder fails to pay such fees as may be payable to keep his or her right in force; or
  - (iii) the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

(2) No plant breeder's right shall be cancelled for reasons other than those under subsection (1).

## **PART 7 GEOGRAPHICAL INDICATIONS**

**83. Definitions of “area”, “geographical indication” –** In this Part:

- “area” includes a country, region, locality or place;
- “geographical indication” means an indication, however expressed, which identifies a product as originating in a particular area, if some quality, reputation or other characteristic of the product is essentially attributable to its geographical origin;
- “misleading geographical indication” means a geographical indication that is misleading as described in section 86;
- “product” means any natural or agricultural product or any product of handicraft or industry.

**84. Prohibition against use of misleading geographical indications – (1)** No person is to apply a misleading geographical indication to any product.

- (2) No person shall:
  - (a) sell any product; or

- (b) import any product for sale in Samoa; or
- (c) export any product for sale outside Samoa; or
- (d) manufacture any product for sale, –

if a misleading geographical indication is applied to the product.

(3) A person who contravenes subsection (1) or (2) commits an offence.

**85. When geographical indication regarded as applied to a product** – A geographical indication is taken to have been applied to a product if:

- (a) the product or its package is marked with, contains or bears the geographical indication; or
- (b) the geographical indication is used in any advertisement for the product; or
- (c) the geographical indication is used in any other manner that indicates or suggests that the product originates in a particular area.

**86. When geographical indication regarded as misleading** – (1) A geographical indication is regarded as misleading, when applied to or in relation to a product:

- (a) if it suggests that the product originates in an area other than its true area of origin and it misleads the public as to the area of origin of the product; or
- (b) if its application to or in relation to the product constitutes unlawful competition; or
- (c) for a wine or spirit, if the geographical indication is applied to a wine or spirit that does not originate in the area suggested by the indication, even if—
  - (i) the true origin of the wine or spirit is indicated; or
  - (ii) the geographical indication is used in translation and that translation evokes the original geographical indication; or
  - (iii) the geographical indication is accompanied by an expression such as “kind”, “type”, “style”, “imitation” or the like.

(2) A geographical indication is regarded as misleading as provided in subsection (1) if it falsely represents to the public that the product originates in an area other than the product’s true area of origin, even if it is literally true as to the area in which the product originates.

(3) For the purpose of determining whether a geographical indication:

- (a) suggests that a product originates in a particular area; or
- (b) misleads the public as to the area of origin of a product, –

regard must be given to the general understanding of consumers or users of the product concerned if it has been, is being or is intended to be sold.

**87. Institution of proceedings regarding use of misleading geographical indication** – An interested person may initiate proceedings in the Supreme Court in order to:

- (a) prevent a contravention of section 84; or
- (b) seek any other remedy arising out of a contravention of section 84.

**88. Remedies available in proceedings regarding use of misleading geographical indication** – (1) A person initiating proceedings under section 87 is entitled to any appropriate remedy available in respect of the infringement of any proprietary right.

(2) Remedies available includes but is not limited to the seeking of an injunction or damages.

(3) Subject to subsections (4) and (5), the Supreme Court has the power to award damages as it thinks fit if it is satisfied that effective relief would not otherwise be available to the plaintiff or applicant.

(4) Despite subsection (3), the Supreme Court must only award damages if it is established that the defendant contravened section 84 and has given regard to:

- (a) the flagrancy of the contravention; and
- (b) any benefit shown to have accrued to the defendant as a result of the contravention; and
- (c) the need to deter the defendant and other persons from further such contraventions.

(5) Despite subsection (3), the Supreme Court must not award damages if it is established that the defendant contravened section 84 but that at the time of the contravention:

- (a) the defendant was not aware of the contravention; and
- (b) the defendant had no reasonable grounds for suspecting that he or she was not entitled to use or apply the geographical indication concerned in the manner he or she did.

**89. Defences available in proceedings regarding use of misleading geographical indication** – (1) In any proceedings relating to any product involving a foreign geographical indication identifying any wine or spirit, it is a defence to establish that a defendant used the geographical indication concerned in Samoa continuously with regard to the same or a similar product:

- (a) for at least 10 years before 15 April 1994;
- (b) in good faith before 15 April 1994; or

(c) the relevant indication is identical with a term customary in common language as the common name for such products in Samoa.

(2) In any proceedings relating to the application of a foreign geographical indication, it is a defence for the defendant to establish that:

- (a) the indication is not or has ceased to be protected in the foreign country concerned; or
- (b) has fallen into disuse in that country.

(3) In any proceedings under this Part, it is a defence for the defendant to establish that the defendant is entitled to use the geographical indication concerned by virtue of section 101(3).

(4) This section must not be taken as limiting the defences that may be available to a defendant in any judicial proceedings.

**90. Presumptions when geographical indication is registered –**

In any proceedings referred to in section 87 regarding the application of a registered geographical indication it is presumed, unless the contrary is proved, that:

- (a) the indication concerned is a geographical indication as defined in section 83; and
- (b) each product which is recorded in the register in relation to the indication concerned has some quality, reputation or other characteristic that is essentially attributable to its geographical origin.

**91. Application for registration – (1)** An application for the registration of a geographical indication must be filed with the Registrar and must specify:

- (a) the applicant's name, address and nationality, the capacity in which the applicant is applying for registration and the details of any agents used by the applicant for this purpose; and
- (b) the geographical indication for which registration is sought; and
- (c) the geographical area to which the geographical indication applies; and
- (d) the products to which the geographical indication applies; and
- (e) the quality, reputation or other characteristic of the products which is attributable to its geographical origin; and
- (f) such other particulars and information as may be prescribed.

(2) An application for the registration of a geographical indication must be accompanied by the prescribed fee and an authorisation of the agent appointing the representative of the applicant, if any.



**92. Persons entitled to apply for registration** – An application for the registration of a geographical indication may be made by or on behalf of any of the following:

- (a) persons carrying on the activity as a producer in the geographical area specified in the application, with respect to the products specified in the application, as well as a group of such persons;
- (b) a person who, in the course of business, consumes or uses a product to which the geographical indication is applied or is to be applied;
- (c) any organisation established to represent or further the interests of persons referred to in paragraph (a) or (b).

**93. Filing date, examination and acceptance of application** –

(1) Subject to subsection (2), the Registrar must accord as the filing date, the date and time upon which the Registrar receives the application for registration of a geographical indication.

(2) Despite subsection (1), the Registrar must accord the filing date only when the requirements of section 91 are met.

(3) The Registrar must accept an application lodged with him or her under section 91 if the Registrar is satisfied that:

- (a) the application complies with the requirements of section 91; and
- (b) the applicant is entitled to lodge the application under section 92; and
- (c) the indication sought to be registered is a geographical indication as defined by this Act; and
- (d) the application of the geographical indication to the products specified in the application will not be contrary to public order or morality; and
- (e) if the application is for the registration of a foreign geographical indication, that it is protected in the foreign country concerned and has not fallen into disuse in that country; and
- (f) if the application is for the registration of a foreign geographical indication, the relevant indication is not identical with the term customary in common language as the common name for such products in Samoa.

(4) If the Registrar is not satisfied, the Registrar must reject the application.

**94. Applicant to be notified of non-complying application** – If the Registrar considers that an application does not comply with the requirements of this Act, the Registrar must:

- (a) inform the applicant; and

- (b) give the applicant an opportunity to respond, or to amend the application by correcting only those matters set out in section 91 within a time to be specified by the Registrar.

**95. Publication and opposition – (1)** As soon as practicable after an application for the registration of a geographical indication has been accepted, the Registrar must cause a notice of acceptance of the application to be published in the Savali.

(2) A person may, within 3 months from the date on which an application was advertised under subsection (1), give notice to the Registrar that he or she opposes the registration of the geographical indication on the grounds that the application does not meet any 1 or more of the requirements specified in sections 91, 92, 93 and 101.

(3) A notice of opposition must be given in writing in the prescribed manner and must include a statement of the grounds of opposition.

(4) The Registrar must send a copy of such notice to the applicant and the applicant may send a counterstatement to the Registrar within 2 months of the receipt of the notice of opposition.

(5) If the applicant fails to file a counterstatement under this subsection, the applicant is taken to have abandoned his or her application.

(6) If the applicant sends a counterstatement, the Registrar must, within 7 days of receiving the counterstatement, provide a copy to the person who gave notice of the opposition and, after hearing the parties, if either or both wish to be heard, and considering the merits of the case, must decide whether the geographical indication should be registered.

**96. Registration – (1)** If the Registrar finds that the requirements referred to in section 93 have been fulfilled, and either:

- (a) the registration of the geographical indication has not been opposed within the prescribed time limit; or
- (b) the registration of the geographical indication has been opposed and the opposition has been decided in the applicant's favour, –

the Registrar must register the geographical indication in the Geographical Indications Register and issue to the applicant a certificate of registration.

(2) An application that does not comply with the requirements of section 93, must be refused by the Registrar.

**97. Conditions on registration –** When registering a geographical indication, the Registrar may impose such conditions on its registration as in his or her opinion are necessary to protect the rights

of the proprietor of any trade mark that was registered or used in good faith:

- (a) before the date of commencement of this Act; or
- (b) in the case of a foreign registered geographical indication, before it was protected in the foreign country concerned.

**98. Homonymous indications** – When registering as a geographical indication a name or word which, when written or uttered, has 2 or more meanings, the Registrar must impose such conditions on its registration as, in his or her opinion, are necessary to ensure:

- (a) that the various meanings are differentiated from each other; and
- (b) that the public is not misled; and
- (c) if 2 or more of the meanings refer to different geographical areas, that all producers concerned are treated equitably.

**99. Effective date of registration** – Subject to section 126, the effective date of registration of a geographical indication is the date on which the application for registration was lodged with the Registrar in accordance with section 91.

**100. Effect of registration** – (1) Only producers carrying on their activity in the geographical area specified in the register have the right to use in the course of trade a registered geographical indication, with respect to the products specified in the register, provided that such products possess the quality, reputation or other characteristic specified in the register.

(2) The registration of a geographical indication must not be taken as giving the registered owner exclusive rights in that geographical indication.

(3) Registration of a geographical indication under this Act shall, in any proceedings under this Act, raise a presumption that such indication is a geographical indication within the meaning of this Act.

**101. Saving of right to use certain descriptions, names or marks** – (1) Nothing in this Act prevents the application to any product of a description or name which is customarily used in Samoa as the common name for that product, even if the description or name is identical to a geographical indication applied elsewhere to that product.

(2) Nothing in this Act limits the right of any person, in the course of business, to use his or her name or the name of his or her predecessor in business, unless his or her use of that name is likely to mislead the public.

(3) Nothing in this Act prevents:

- (a) the registration of a mark under this Act that is identical or similar to a geographical indication, if the application for the mark's registration was made in good faith before the commencement of this Act or before the geographical indication was protected in its country of origin; or
- (b) the use of a mark that is identical or similar to a geographical indication if—
  - (i) the mark was registered in good faith under this Act or before the commencement of this Act or before the geographical indication was protected in its country of origin; or
  - (ii) the person who uses the mark acquired the right to do so through use in good faith before the date of publication of this Act or before the geographical indication was protected in its country of origin.

**102. Act not to be construed as limiting other laws preventing misuse of geographical indications** – This Act must not be taken as limiting any other law which prohibits or restricts the application or use of misleading geographical indications, in particular:

- (a) the crime of fraud; and
- (b) the torts of passing off and unlawful competition; and
- (c) any enactment relating to the labelling or sale of any goods, consumer protection and unfair competition.

## **PART 8**

### **LAYOUT-DESIGNS OF INTEGRATED CIRCUITS**

**103. Definition of “integrated circuit” and “layout-design”**– In this Part:

“integrated circuit” means a product, in its final form or an intermediate form in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and on a piece of material and which is intended to perform an electronic function;

“layout-design” is synonymous with “topography” and means the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the inter-connections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture.

**104. Registrable layout-designs of integrated circuits** – (1) Layout-designs of integrated circuits are registrable to the extent that they are original.

(2) For the purposes of subsection (1), a layout-design is considered to be original if it is the result of its creator's own intellectual effort and is not commonplace among creators of layout-designs and manufacturers of integrated circuits at the time of its creation.

(3) A layout-design consisting of a combination of elements and inter-connections that are commonplace is to be protected only if the combination taken as a whole is original within the meaning of subsection (2).

(4) A person may apply for registration only where the layout-design has not yet been commercially exploited, or has been commercially exploited for not more than 2 years anywhere in the world.

(5) No layout-design or integrated circuit which has been commercially exploited, anywhere in the world, for more than 2 years prior to the entry into force of this Act may be registered.

**105. Right to registration of layout-design – (1)** The right to protection of a layout-design belongs to the creator of the layout-design.

(2) When 2 or more persons have jointly created made a layout-design, the right to the layout-design belongs to them jointly.

(3) When 2 or more persons have made the same layout-design independently of each other, the person whose application has the earliest filing date has the right to the layout-design, as long as the application is not withdrawn, abandoned or rejected.

(4) The right to a layout-design may be assigned, or may be transferred by succession.

(5) If a layout-design is made in execution of a commission or an employment contract, the right to the layout design belongs to the person having commissioned the work or the employer unless a contractual provision says otherwise.

**106. Application for registration – (1)** An application for the registration of a layout-design must be filed with the Registrar and be accompanied by the prescribed application fee.

(2) An application for registration of a layout-design must contain:

- (a) the applicant's name, address and nationality including the details of any agents used by the applicant for this purpose; and
- (b) each creator's name; and
- (c) a request for registration of the layout-design and a brief description of the layout-design; and
- (d) a copy or drawing of the layout-design together with information defining the electronic function which the integrated circuit is intended to perform but the

application may omit such parts of the copy or drawing that relate to the manner of manufacture of the integrated circuit, provided the parts submitted are sufficient to allow the identification of the layout-design; and

- (e) specify the date of first commercial exploitation of the layout-design anywhere in the world or indicate that such exploitation has not commenced; and
- (f) a written authorisation of the agent appointing the representative of the applicant, if any.

(3) If the applicant is not the creator, the application must be accompanied by a statement justifying the applicant's right to the registration of the layout-design.

(4) An application may contain a request that the publication of the layout-design, upon registration, be deferred for a period not exceeding 12 months from the date of filing or, if priority is claimed, from the date of priority, of the application.

(5) A separate application must be filed for each layout-design.

(6) An applicant for the registration of a layout-design may withdraw the application at any time during its examination.

**107. Examination and registration of layout-design** – (1) If at the time of receipt, the applicant meets the requirements of section 106(1), the Registrar must accord the date of receipt of the application as the filing date.

(2) After according a filing date, the Registrar must examine the application for compliance with the requirements of section 106.

(3) If the Registrar is satisfied that the conditions referred to in subsection (2) are met, he or she must:

- (a) register the design in the Layout-Designs of Integrated Circuits Register; and
- (b) issue to the applicant a certificate of registration of the layout-design.

(4) If the Registrar is satisfied that the conditions are not fulfilled, he or she must refuse the application and advise the applicant of his or her decision to refuse the application.

(5) If an application does not fulfil the requirements under section 106, the Registrar may require the applicant to file any correction to the application.

(6) If a correction is made in accordance with subsection (5), the Registrar must accord the filing date as being the date upon which he or she received the correction from the applicant.

(7) If no correction is made, the application must be treated as if it had not been filed.

**108. Applicant to be notified of non-complying application** – If the Registrar considers that an application does not comply with the requirements of this Act, the Registrar must:

- (a) inform the applicant; and
- (b) give the applicant an opportunity to respond, or to amend the application by correcting only those matters set out in section 106 within a time to be specified by the Registrar.

**109. Rights conferred by registration** – (1) A person who owns a registered layout-design under section 107 has the exclusive right to exploit the registered layout-design.

(2) A person intending to exploit a registered layout-design in Samoa must first obtain the consent of the owner of the layout-design.

(3) In this Act, “to exploit” a registered layout-design means any of the following:

- (a) reproducing any part of the protected layout-design, whether by incorporation in an integrated circuit or otherwise, except the act of reproducing any part that does not comply with the originality requirement in section 104; and
- (b) importing, offering for sale, selling or using the protected layout-design, an integrated circuit in which the protected layout-design is incorporated or an article incorporating such an integrated circuit in so far as it continues to contain an unlawfully reproduced layout-design.

(4) Protection under this Act is not dependent upon whether or not the integrated circuit which incorporates the protected layout-design is itself incorporated in an article.

(5) The rights under a registered layout-design do not extend to:

- (a) the reproduction of the protected layout-design for private purposes or for the sole purpose of evaluation, analysis, research or teaching; or
- (b) the incorporation in an integrated circuit of a layout-design created on the basis of such analysis or evaluation and which is itself original within the meaning of section 104; or
- (c) acts in respect of a protected layout- design, or in respect of an integrated circuit in which such a layout-design is incorporated, that has been put on the market anywhere in the world by or with the consent of the right holder; or
- (d) acts performed in respect of an identical layout-design which is original and has been created independently by a third party; or

- (e) acts performed in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit if the person performing or ordering such an act did not know and had no reasonable ground to know; when acquiring the integrated circuit or the article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design.

(6) If a person under subsection (5)(e) has received sufficient notice that the layout-design was unlawfully reproduced, that person may perform any of those acts only with respect to the stock on hand or ordered before such time and is liable to pay to the right holder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such a layout-design.

**110. Commencement and duration of protection – (1)** Subject to section 126, protection of a layout-design under this Act commences:

- (a) on the date of the first commercial exploitation, anywhere in the world of the layout-design, by or with the consent of the right holder, provided that an application for protection is filed by the right holder with the Registrar in accordance with section 106; or
- (b) on the filing date accorded to the application for the registration of the layout-design filed by the right holder, if the layout-design has not been previously exploited commercially anywhere in the world.

(2) Protection of a layout-design under this Act expires at the end of the tenth calendar year after the date of commencement of protection.

**111. Invalidation – (1)** An interested person may apply to the Supreme Court for the invalidation of the registration of a layout-design on the grounds that:

- (a) the layout-design is not registrable under section 104; or
- (b) the right holder is not entitled to register under section 105; or
- (c) the application was not filed within the time limit referred to in section 110, if the layout-design has been commercially exploited, anywhere in the world, before the filing of the application for registration of the layout-design.

(2) When the grounds for invalidation are established with respect only to a part of the layout-design, only the corresponding part of the registration is cancelled.

(3) A cancelled layout-design registration, or any part of it, is to be regarded as void from the commencement date of the protection.



(4) The Registrar of the Supreme Court must notify the Registrar of the decision of the Supreme Court or the decision on any appeal (if any) and the Registrar must record it and publish a reference referring to it as soon as possible.

**PART 9**  
**ENFORCEMENT AND ADMINISTRATION**  
**OF RIGHTS**

**112. Personal property** – A right duly granted or awarded under this Act is to be considered, for all intents and purposes, as personal property belonging to the owner of that right.

**113. Changes in registration** – (1) A change in the registration of a patent, innovation patent, registered design, mark, collective mark, plant breeder's right, geographical indication or layout-design, or in the ownership of an application for any of them, must be in writing and must, upon the request of any interested party to the Registrar, be recorded.

(2) A change which should be recorded under subsection (1) has no effect against third parties until such recording is effected.

(3) A change in the ownership of the registration of a collective mark, or of an application for registration, requires previous approval by the Minister.

(4) A change in ownership of the registration of a mark or a collective mark is invalid if, in the opinion of the Registrar, it is likely to deceive or cause confusion, particularly in regard to the nature, origin, manufacturing process, characteristics, or suitability for their purpose of the goods or services in relation to which the mark or collective mark is intended to be used or is being used.

(5) A change in ownership of the registration of a geographical indication is invalid if, in the opinion of the Registrar, it is likely to deceive or cause confusion, particularly in regard to the origin of the products in relation to which the geographical indication is intended to be used or is being used.

**114. Disclaimer** – (1) If, in determining whether a right under this Act is to be registered, or is to remain on the register, the Registrar or the Supreme Court considers that there are public interest reasons for doing so, the Registrar or the Supreme Court may require, as a condition of the right being on the relevant Register, that the owner:

- (a) disclaims any right to the exclusive use of any part of the registered right; or
- (b) makes any other disclaimer that the Registrar or the Supreme Court considers necessary for the purpose of defining the owner's rights under the registration.

(2) If a disclaimer has been registered in respect of a part of any registered right, a person not infringe the right by using that part of the right.

**115. Powers of entry and search** – (1) Subject to subsection (2), the Registrar may, pursuant to a warrant issued by the Supreme Court,:

- (a) enter and search any building, vessel or vehicle; or
- (b) stop and search any person; or
- (c) pass across any land.

(2) The Registrar, after obtaining the prior written approval of the Attorney-General, may only exercise powers under subsection (1) without a warrant:

- (a) where there is no time to apply for a warrant; and
- (b) if the Registrar believes, on reasonable grounds, that an infringement of any rights granted under this Act is occurring or has occurred or an offence is being or has been committed against this Act.

**116. Licence contract** – (1) A copy of each licence contract concerning a patent, innovation patent, a registered design, mark, collective mark, plant breeder's rights, geographical indication or layout-design or concerning an application for any of them, must be in writing and may be submitted to the Registrar, who must keep its contents confidential but must record it.

(2) If an application made under section 113 for the change of registration of a patent, innovation patent, registered design, mark, collective mark, plant breeder's right, geographical indication or layout design complies with this Act, the Registrar must notify any person recorded under this section as a licensee of such right.

(3) The recording of a licence under this section is presumed to constitute notice to others of the existence of the licence.

**117. Agents** – (1) An applicant for any right, proceeding, process or record under this Act whose ordinary residence or principal place of business is outside Samoa must be represented by a legal practitioner resident and practising in Samoa.

(2) An applicant wishing to use an agent for any application under this Act must notify the Registrar in writing of their nominated agent.

(3) The Registrar must keep a record of all agents notified under subsection (2).

(4) An applicant who fails to comply with subsection (2) will be taken as not being represented by their agent.

**118. Intellectual Property Registry** – (1) The Intellectual Property Registry is established within the Ministry which is to be kept by the Registrar.

(2) The Registrar is responsible for all matters relating to the procedure for the grant of patents, innovation patents, the registration of registered designs, marks, collective marks, plant breeder's rights, geographical indications, layout-designs, and for the administration of granted rights and protections as provided for under this Act.

(3) A person appointed as Registrar may be assisted by a Deputy and any other delegated personnel as may be appointed under the provisions of the Public Service Act 2004.

(4) The Registrar must supervise and perform all duties required by this Act and has the authority to carry out studies, programs or exchanges of items or services regarding domestic and international intellectual property law.

(5) Decisions under this Act must be signed by the Registrar or his or her delegate.

**119. Registers – (1)** The Intellectual Property Registry must keep and maintain the following registers:

- (a) Patents Register;
- (b) Innovation Patents Register;
- (c) Registered Designs Register;
- (d) Trade Marks Register;
- (e) Plant Breeder's Rights Register;
- (f) Geographical Indications Register; and
- (g) Layout-Designs of Integrated Circuits Register.

(2) The registers may be inspected by any person, and any person may obtain extracts from them upon the payment of a prescribed fee.

**120. Correction of errors; extension of time – (1)** The Registrar may correct any error of translation or transcription, clerical error or mistake in any application or document filed with the Intellectual Property Registry or in any recording effected pursuant to this Act.

(2) If the Registrar is satisfied that the circumstances justify it, he or she may, upon receiving a written request, extend the time for doing any act or taking any proceeding under this Act, upon notice to the parties concerned and upon such terms as the Registrar directs.

(3) Subject to subsection (4), an extension under subsection (2) may be granted even though the time for doing the act or taking the proceeding has expired.

(4) Despite subsection (3), any extension granted shall:

- (a) last 60 days at any 1 time; and
- (b) not be granted more than 3 times.

**121. Replacement certificate of registration –** The Registrar may issue a further certificate of registration if:

- (a) an interested person applies in writing for a further certificate of registration; and
- (b) the prescribed fee, if any, has been paid; and

- (c) the Registrar is satisfied that a certificate of registration has been lost or destroyed or in any other case in which he or she thinks it expedient.

**122. Language of documents and translations** – An application under this Act must be in English and any document forming part of an application or submitted to the Registrar which is in a language other than English must be accompanied by a certified English translation.

**123. Exercise of discretionary powers** – The Registrar must give any party to a proceeding before him or her an opportunity of being heard before exercising adversely to that party any discretionary power vested in the Registrar by this Act.

**124. Competence of court; Appeals** – (1) The Supreme Court has jurisdiction in cases of dispute relating to the application of this Act and in matters which under this Act are to be referred to the Court.

(2) A decision taken by the Registrar under this Act, in particular the grant of a patent or an innovation patent or the registration of a registered design, mark, collective mark, geographical indication or layout-design, or the refusal of an application for such a grant or registration, may be the subject of an appeal by any interested party before the Supreme Court and such appeal must, unless otherwise provided for in the Act, be filed within 12 months of the date of the decision.

**125. Infringement** – (1) On the request of the owner of the right or the title of protection, or of a licensee if the licensee has requested the owner to institute court proceedings for specific relief and the owner has refused or failed to do so, the court may grant an injunction to prevent infringement, an imminent infringement, or an unlawful act and may award damages and grant any other remedy provided for in the general law.

(2) A person who knowingly performs an act which constitutes an infringement in relation to any trade mark right or protection accorded by this Act, if committed wilfully or by gross negligence and for profit-making purposes, commits an offence and is liable on summary conviction to a fine of 1,000 penalty units or to imprisonment not exceeding 5 years or both.

(3) For the purposes of proceedings, other than criminal proceedings, for the violation of the rights of the owner of a patent or innovation patent, if the subject matter of the patent or innovation patent is a process for obtaining a product, the burden of establishing that a product was not made by the process is on the alleged infringer if either of the following conditions is fulfilled:

- (a) the product is new;
- (b) a substantial likelihood exists that the product was made by the process and the owner of the patent or innovation patent has been unable through reasonable efforts to determine the process actually used.

(4) In requiring the production of evidence, the court before which the proceedings referred to in subsection (3) takes place must take into account the legitimate interests of the alleged infringer in not disclosing manufacturing and business secrets.

**126. Convention applications – (1)** If a person who:

- (a) has applied for protection of any right or protection in a Convention country or is the legal representative or assignee of a person who has made such application; and
- (b) applies in terms of this Act, within 12 months from the date of the application for protection in the Convention country, for registration of the right or protection,–

the person is entitled, if the person's right or protection is otherwise registrable in terms of this Act, to registration of the person's right or protection in priority to other applicants and the registration has the same date as the date of the application in the Convention country.

(2) If applications have been made for the registration of a right or protection in 2 or more Convention countries, the period of 12 months referred to in subsection (1)(b) is reckoned from the date on which the earlier or earliest of those applications was made.

(3) If a person has applied for protection for a right or protection by an application which under:

- (a) the terms of a treaty subsisting between any 2 or more Convention countries, is equivalent to an application duly made in any one of those Convention countries; or
- (b) the law of any Convention country is equivalent to an application duly made in that Convention country,–

the person is taken for the purposes of this section to have applied in that Convention country.

(4) The registration of a right or protection must not be invalidated by reason only of the use of the right or protection in Samoa during the period specified in this section as that within which application may be made.

(5) The application for the registration of a right or protection under this section is made in the same manner as is required in the case of any ordinary application under this Act.

(6) An application under this section shall state:

- (a) the Convention country in which such application for protection was made; and
- (b) the number of the application; and

(c) the effective date of the application, – and shall be accompanied by a copy of the Convention application certified as correct by the registry within which it was filed.

(7) In this section, “right or protection” means any right or protection pertaining to patents, innovation patents, registered designs, marks, collective marks, plant breeder’s rights, geographical indications and circuit layouts as are duly accorded under this Act.

## **PART 10 MISCELLANEOUS**

**127. Civil protection for the Registrar – (1)** Claims made by or against the Registrar must be made pursuant to the Government Proceedings Act 1974.

(2) Despite any other law, no action, suit or proceedings for any act or omission in connection with the responsibilities, powers or duties imposed on the Registrar by this Act is to be brought or maintained against a person who has been or is:

- (a) the Registrar if the person has been or is acting in good faith; or
- (b) acting under the authority of the Registrar under the Act if the person has been or is acting in good faith.

(3) The Government and the Registrar are not liable for any costs or damages in any legal proceedings challenging any action taken under this Act, or for any failure or refusal to take any action which is authorised by this Act.

### ***128. Repealed***

**129. Grace period for fees – (1)** Despite any provision of this Act but subject to subsection (2), the Registrar may grant a grace period of 6 months for the late payment of any fee required under this Act.

(2) A late payment of fees is subject to a prescribed late payment fee.

**130. Restoration of rights into Register – (1)** Subject to subsection (2), the owner of any right conferred under this Act may apply to the Registrar for the restoration of the owner’s rights:

- (a) if the owner has failed to make payment of any fees required under this Act; or
- (b) if registration of the owner’s rights conferred under this Act has lapsed.

(2) The Registrar may restore a person’s right conferred under this Act within the Registry if:

- (a) the applicant has made application 12 months from the renewal date of his or her protected right; and

- (b) the applicant has paid all the requisite fees including any late fees; and
- (c) the Registrar thinks it is appropriate to do so in the circumstances.

**131. Forms** – The Minister may by notice published in the Savali, approve, amend, or replace the form for any application, certificate, notice, agreement or any other document required under this Act.

**132. Offence for groundless threat of legal proceedings** – (1) A person claiming to be the owner of a right conferred under this Act who, by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of an alleged infringement of any right conferred under this Act knowing that it was not in fact an infringement of any legal rights of the person making such threats, commits an offence.

(2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 5 years, or both.

(3) It is a defence for the person making a groundless threat if that person with due diligence, commences and prosecutes an action for infringement of the right claimed by him or her.

**133. Offence of making false entries in register, etc., for production or tendering false entries** – A person who:

- (a) makes or causes to be made a false entry in any of the Registers kept under this Act, or
- (b) makes or causes to make writing falsely purporting to be a copy of any entry in such register, or
- (c) produces or tenders or causes to be produced or tendered as evidence any such entry or writing, knowing the same to be false, –

commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 7 years or both.

**134. Offence for making false statements for the purpose of deceiving or influencing any authority or officer** – A person who:

- (a) with a view to deceiving any authority or officer in the execution of the provisions of this Act; or
- (b) with a view to procuring or influencing the doing of omission of anything in relation to this Act or any matter under this Act, –

makes a false statement or representation knowing the same to be false commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units or imprisonment not exceeding 7 years or both.

**135. Penalties** – A person who commits an offence against this Act for which no other penalty is prescribed is liable on conviction to a fine not exceeding 1,000 penalty units or to imprisonment for a term not exceeding 5 years; and, if the offence is a continuing one, to a further fine not exceeding 10 penalty units for every day after the first day on which the offence has continued.

**136. Offences by companies** – (1) Subject to subsections (2) and (3), if an offence under this Act has been committed by a company, a person who, at the time the offence was committed, was in charge of, and was responsible to the company for, the conduct of the business of the company, as well as the company is taken to have committed that offence and is liable for prosecution.

(2) Despite subsection (1), if an offence under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer is taken to have committed that offence and is liable for prosecution.

(3) Despite subsection (1), it is a defence if a person proves that the offence was committed without his or her knowledge or that he or she exercised all due diligence to prevent the commission of the offence.

(4) In this section:

“company” means a body corporate and includes a firm or other association of persons;

“director” in relation to a firm means a partner in the firm.

**137. Regulations** – (1) The Head of State acting on the advice of Cabinet, may make regulations prescribing any matter required for the implementation of this Act.

(2) Without limiting subsection (1), regulations made pursuant to this section may provide for all or any of the following:

- (a) prescribing measures for issuing any licence under this Act;
- (b) the operation of, and conditions and procedures observed by any applicant under this Act;
- (c) the manner in which any application or procedures is to be undertaken under this Act;
- (d) the appointment, powers and duties of delegated personnel;
- (e) the duties and procedures to be followed by the Registrar in examining or reviewing any application under this Act;



- (f) developing standards and measures required to be observed by any right or protection holder;
  - (g) prescribing the terms and conditions of licences issued under this Act;
  - (h) requiring the provision of certain information related to any application under this Act;
  - (i) the management of any register required to be kept under the Act;
  - (j) determining processes and matters relating to access and benefit sharing of any of the rights under this Act;
  - (k) prescribing offences against the regulations and penalties for such offences, not exceeding a fine of 500 penalty units, or imprisonment not exceeding 3 years, or both, and, if the offence is a continuing one, a further fine not exceeding 5 penalty units for every day that the offence has continued;
  - (ka) prescribing fees for the purposes of this Act;
  - (l) prescribing any other matter, which is required or authorised to be prescribed by this Act.
- (3) The amount of a fee prescribed under subsection (2)(ka):
- (a) shall be proposed by the Ministry;
  - (b) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management Act 2001.

**138. Repeal** – The following enactments are repealed:

- (a) Patents Act 1972;
- (b) Trade Marks Act 1972;
- (c) Industrial Designs Act 1972.

**139. Consequential amendments** – The Customs Act 1977 is amended in accordance with the table in Schedule 3.

[NB: The Customs Act 1977 has been repealed by the Customs Act 2014]

**140. Savings and transitional** – (1) All patents granted and marks and industrial designs registered under the repealed enactments remain in force and, subject to subsections (2), (3) and (4), are taken to have been granted or registered under the corresponding provisions of this Act.

(2) Patents taken to have been granted by virtue of subsection (1) remain in force for the unexpired portion of the period of protection provided under the Patents Act 1972, subject to the payment of the prescribed fees provided for in this Act.

(3) Marks taken to have been registered by virtue of subsection (1) remain in force for the unexpired portion of the period of protection provided under the Trade Marks Act 1972 and upon renewal shall be subject to the provisions of this Act.

(4) Industrial designs taken to have been granted by virtue of subsection (1) remain in force for the unexpired portion of the period of protection provided under the Industrial Designs Act 1972 and upon renewal shall be subject to the provisions of this Act.

(5) An authorisation, registration, appointment, approval, cancellation, suspension, condition, order, advice, direction or act of authority under or concerning the repealed enactments, so far as they are subsisting or in force at the time of the repeal of those Acts, is to continue and have effect under the corresponding provisions of this Act until such time as they are altered, amended or cancelled, as the case may require, under the provisions of this Act and, if there is any question or concern as to what is a corresponding provisions of this Act, the Minister by notice in writing may for all purposes declare a provision of this Act to be a corresponding provision.

(6) Despite the provisions of this Act, all applications and other matters arising out of or under the repealed enactments which are not determined or otherwise dealt with under such provisions at the date of the commencement of this Act are to be determined or otherwise dealt with under the corresponding provisions of this Act with such modifications, adaptations and alterations as the Minister may determine in writing from time to time.

(7) A register kept under the repealed enactments shall continue to be maintained and shall be taken to be part of the registers kept under this Act.

(8) A reference to any provision or matter under or concerning the repealed enactments in any enactment is to be taken for all purposes as a reference to the corresponding provision or matter in this Act, unless the Minister by notice determines otherwise.

## **SCHEDULE 1**

### **Classifications for Registered Designs (Section 39)**

#### **International Classification for Designs under the Locarno Agreement (Ninth Edition)**

<b><u>Class 1</u></b>	Foodstuffs
<b><u>Class 2</u></b>	Articles of clothing and haberdashery
<b><u>Class 3</u></b>	Travel goods, cases, parasols and personal belongings, not elsewhere specified
<b><u>Class 4</u></b>	Brush ware
<b><u>Class 5</u></b>	Textile piece goods, artificial and natural sheet material
<b><u>Class 6</u></b>	Furnishing

<b><u>Class 7</u></b>	Household goods, not elsewhere specified
<b><u>Class 8</u></b>	Tools and hardware
<b><u>Class 9</u></b>	Packages and containers for the transport or handling of goods
<b><u>Class 10</u></b>	Clocks and watches and other measuring instruments, checking and signalling instruments
<b><u>Class 11</u></b>	Articles of adornment
<b><u>Class 12</u></b>	Means of transport or hoisting
<b><u>Class 13</u></b>	Equipment for production, distribution or transformation of electricity
<b><u>Class 14</u></b>	Recording, communication or information retrieval equipment
<b><u>Class 15</u></b>	Machines, not elsewhere specified
<b><u>Class 16</u></b>	Photographic, cinematographic and optical apparatus
<b><u>Class 17</u></b>	Musical instruments
<b><u>Class 18</u></b>	Printing and office machinery
<b><u>Class 19</u></b>	Stationery and office equipment, artists' and teaching materials
<b><u>Class 20</u></b>	Sales and advertising equipment, signs
<b><u>Class 21</u></b>	Games, toys, tents and sports goods
<b><u>Class 22</u></b>	Arms, pyrotechnic articles, articles for hunting, fishing and pest killing
<b><u>Class 23</u></b>	Fluid distribution equipment, sanitary, heating, ventilation and air-conditioning equipment, solid fuel
<b><u>Class 24</u></b>	Medical and laboratory equipment
<b><u>Class 25</u></b>	Building units and construction elements
<b><u>Class 26</u></b>	Lighting apparatus
<b><u>Class 27</u></b>	Tobacco and smokers' supplies
<b><u>Class 28</u></b>	Pharmaceutical and cosmetic products, toilet articles and apparatus
<b><u>Class 29</u></b>	Devices and equipment against fire hazards, for accident prevention and for rescue
<b><u>Class 30</u></b>	Articles for the care and handling of

	animals
<b><u>Class 31</u></b>	Machines and appliances for preparing food or drink, not elsewhere specified
<b><u>Class 32</u></b>	Graphic symbols and logos, surface patterns, ornamentation

## SCHEDULE 2

### Classifications for Trademarks (Section 48)

#### International Classification of Goods and Services under the Nice Agreement Ninth Edition

##### Part 1      Classes of goods

Item number (Class number)	Class of goods (Class heading)
1	Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry
2	Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colourants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists
3	Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices
4	Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles, wicks
5	Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants;

Item number (Class number)	Class of goods (Class heading)
6	preparations for destroying vermin; fungicides, herbicides Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores
7	Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements, other than hand operated; incubators for eggs
8	Hand tools and implements (hand operated); cutlery; side arms; razors
9	Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus
10	Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopaedic articles; suture materials
11	Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes
12	Vehicles; apparatus for locomotion by land, air or water
13	Firearms, ammunition and projectiles; explosives; fireworks
14	Precious metals and their alloys and goods in precious metals or coated

<b>Item number (Class number)</b>	<b>Class of goods (Class heading)</b>
	therewith, not included in other classes; jewellery, precious stones; horological and chronometric instruments
15	Musical instruments
16	Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); playing cards; printers' type; printing blocks
17	Rubber, gutta-percha, gum, asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal
18	Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery
19	Building materials (non-metallic); non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal
20	Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics
21	Household or kitchen utensils and containers; combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes;

Item number (Class number)	Class of goods (Class heading)
22	steel wool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials
23	Yarns and threads, for textile use
24	Textiles and textile goods, not included in other classes; bed and table covers
25	Clothing, footwear, headgear
26	Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers
27	Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile)
28	Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees
29	Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats
30	Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice
31	Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals, malt
32	Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages
33	Alcoholic beverages (except beers)
34	Tobacco; smokers' articles; matches

<b>Item number (Class number)</b>	<b>Class of goods (Class heading)</b>
<b>Part 2</b>	
<b>Classes of services</b>	
<b>Item number (Class number)</b>	<b>Class of services (Class heading)</b>
35	Advertising; business management; business administration; office functions
36	Insurance; financial affairs; monetary affairs; real estate affairs
37	Building construction; repair; installation services
38	Telecommunications
39	Transport; packaging and storage of goods; travel arrangement
40	Treatment of materials
41	Education; providing of training; entertainment, sporting and cultural activities
42	Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software
43	Services for providing food and drink; temporary accommodation
44	Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services
45	Legal services; security services for the protection of property and individuals; personal and social services rendered by others to meet the needs of individuals

**SCHEDULE 3**  
**Consequential Amendments to Customs Act 1977**  
**(Section 139)**

The Customs Act 1977 is amended as shown in the table below:

<b>Provision</b>	<b>Amendment</b>
Title in Part VIII A	Omit the title and substitute:  <b>“BORDER PROTECTION</b>



	<b>MEASURES FOR COPYRIGHT, AND DESIGN GOODS</b>
203A	<p>(a) after the word “copyright” in the definition of “copyright material” insert: “under the Copyright Act 1998;”;</p> <p>(b) after the definition of “Court”, insert: “design right material” means material that is the subject of design right under Part IV of the Intellectual Property Act 2011; “infringing design”, in relation to a registered design, means a design that infringes a registered design under section 42 of the Intellectual Property Act 2011;”;</p> <p>(c) omit the definition of “infringing sign”, and substitute: “infringing sign”, in relation to a trade mark, means a sign that infringes a registered mark under section 56 of the Intellectual Property Act 2011;”;</p> <p>(d) omit the definition of “infringement proceedings”, and substitute: “infringement proceedings” means proceedings brought under section 26 of the Copyright Act 1998 or section 125 of the Intellectual Property Act 2011;”;</p> <p>(e) after the definition of “infringement proceedings”, insert: “mark” has the same meaning as in section 45 of the Intellectual Property Act 2011; “registered design” means a design registered under section 40 of the Intellectual Property Act 2011;”;</p>
	<p>(f) omit the definition of “registered trade mark”, and substitute: “registered mark” means a mark registered under section 55 of the Intellectual Property Act 2011;”;</p> <p>(g) the definition of “trade mark” is repealed.</p>
203B	(a) omit paragraph (a) and substitute:

	<p>“(a) claims that he or she is the owner of copyright material or design right material specified in the notice or is the owner of a mark or a design that is registered in respect of goods specified in the notice, as the case may be; and”;</p> <p>(b) omit sub-paragraph (i) and substitute -  “(i) are goods that infringe the owner’s rights in copyright material or design right material; or”;  after the word “sign” in sub-paragraph (ii) insert “or infringing design”.</p>
203C	<p>(a) omit paragraph (a) and substitute:  “(a) prima facie evidence that the claimant is the owner of the copyright in copyright material, design right in design right material or the owner of a registered mark or registered design;”;</p> <p>(b) omit paragraph (b) and substitute:  “(b) a sufficiently detailed description of the copyright material, design right material, registered mark or registered design;”.</p>
203F	<p>Omit section 203F and substitute:</p> <p><b>“203F. Power to suspend customs clearance procedure</b> – If the Comptroller accepts the notice under section 203D and the notice has not been revoked, the Comptroller may suspend the customs clearance of any goods which the Comptroller has reasonable grounds to suspect are goods which contain infringing copyright material, infringing design right material, an infringing sign or infringing design and which are being imported.”.</p>
203L	<p>Omit section 203L and substitute:</p> <p><b>“203L. Destruction of goods-</b>(1) If, in proceedings under the Copyright Act 1998 or Intellectual Property Act 2011, the Court</p>

	decides that any goods infringe an owner's rights in relation to copyright, design right, a registered mark or a registered design, the Court may make an order that the goods be destroyed or disposed of outside the channels of commerce in such a manner so as to avoid harm to the owner of the copyright, design right, registered mark or registered design.”.
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**REVISION NOTES 2012 – 2017**

This is the official version of this Act as at 31 December 2017.

This Act has been revised by the Legislative Drafting Division from 2012 to 2017 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

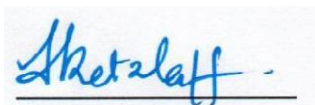
- (a) Insertion of the commencement date
- (b) Other minor editing in accordance with the lawful powers of the Attorney General
- (c) Part numbering changed to decimal

The following amendments were made to this Act since its enactment:

By the *Fees and Charges (Miscellaneous Amendments) Act 2017* No. 13:

Amendments made by this Act reflect that fees charged are to be prescribed by regulations. Amendments were made to the following sections:

- (a) 7, 11, 13, 16, 22, 26, 30, 39, 43, 48, 57, 64, 69, 77, 91, 106, 119, 121, ; and
- (b) 128, 129, 137, 140,



Lemalu Hermann P. Retzlaff  
Attorney General of Samoa

*This Act is administered by  
the Ministry of Commerce, Industry and Labour.*

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