

P.N.D.C.L. 137

**PROTOCOL ON PATENTS AND INDUSTRIAL DESIGNS WITHIN THE
FRAMEWORK OF THE INDUSTRIAL PROPERTY ORGANISATION FOR
ENGLISH-SPEAKING AFRICA (ESARIPO) (RATIFICATION) ACT, 1985**

ARRANGEMENT OF SECTIONS

SECTION

1. Provisions of Protocol to have force of law in Ghana.
2. Interpretation.
3. Commencement.

SCHEDULE

P.N.D.C.L. 137

**PROTOCOL ON PATENTS AND INDUSTRIAL DESIGNS WITHIN THE
FRAMEWORK OF THE INDUSTRIAL PROPERTY ORGANISATION FOR
ENGLISH-SPEAKING AFRICA (ESARIPO) (RATIFICATION) ACT, 1985¹**

AN ACT to give the force of law to the Protocol of Patents and Industrial Designs within the Framework of the Industrial Property Organisation for English-Speaking Africa, and to provide for related matters.

1. Provisions of Protocol to have force of law in Ghana

- (1) Subject to the provisions of an enactment relating to patents or industrial designs,

1. The Act was issued as the Protocol on Patents and Industrial Designs within the Framework of the Industrial Property Organisation for English-speaking Africa (ESARIPO) (Ratification) Law, 1985 (P.N.D.C.L. 137) made on the 5th day of November, 1985 and notified in the *Gazette* on 24th December, 1986. The Preamble reads as follows:

“WHEREAS the Protocol on Patents and Industrial Designs within the Framework of the Industrial Property Organisation for English-Speaking Africa (ESARIPO) the text of which together with the Regulations made thereunder is set out in the Schedule and referred to in this Law as ‘the Protocol’ was adopted at Harare, Zimbabwe on 10th December, 1982:

AND WHEREAS by virtue of section 8 of the Provisional National Defence Council (Establishment) Proclamation, 1981 the Protocol shall come into force on ratification by the Provisional National Defence Council:

AND WHEREAS the Protocol was ratified by the Government of Ghana on the 30th day of September, 1983:

AND WHEREAS it is necessary to give to the Protocol in order that the provisions hereof shall have the force of law in Ghana:”

the provisions of the Protocol set out in the Schedule shall have the force of law in the Republic and shall apply

- (a) to a patent granted by the Industrial Property Organisation for English-Speaking Africa under the Protocol and in respect of which Ghana is a designated state; or
- (b) an industrial design registered by the Industrial Property Organisation for English-Speaking Africa under the Protocol and in respect of which Ghana is a designated state.

(2) Despite subsection (1), a patent granted or an industrial design registered, by the Industrial Property Organisation for English-Speaking Africa shall not have effect in the Republic if the Registrar-General communicates to the Industrial Property Organisation for English-Speaking Africa in respect of the application for grant of the patent or registration of the industrial design a decision in accordance with the Protocol that the patent, if granted or the industrial design if registered shall not have an effect in the Republic.

2. Interpretation

In this Act “**Protocol**” means the Protocol on Patents and Industrial Designs within the Framework of the Industrial Property Organisation for English-Speaking Africa and the Regulations made under the Protocol.

3. Commencement

*Spent.*²

SCHEDULE

PART ONE

Protocol

On Patents and Industrial Designs within the framework of the Industrial Property Organisation for English-Speaking Africa (ESARIPO).

PREAMBLE

THE CONTRACTING STATES OF THIS PROCOTOL,

Having regard to the Agreement on the Creation of an Industrial Property Organisation for English-Speaking Africa, concluded in Lusaka (Zambia) on December 9th, 1976, and in particular to its Article III (c), in accordance with which objectives of the Organisation include the establishment of such common services or organs as may be necessary or desirable for the co-ordination, harmonisation and development of the industrial property activities affecting its members.

2. The section provided that the Law shall be deemed to have come into force on the 25th day of April, 1984.

Considering the advantages to be gained by the pooling of resources in respect of industrial property administration hereby agree as follows:

Section 1

General

The Industrial Property Organisation for English-Speaking Africa (ESARIPO) is empowered to grant patents and to register industrial designs and to administer such patents and industrial designs on behalf of the Contracting States in accordance with provisions of this Protocol, through its Secretariat (hereinafter referred to as "the Office").

Section 2

Filing and transmittal of applications

(1) Applications for grant of patents or the registration of industrial designs by the Office shall be filed by the authorised representative of the applicant with the industrial property office of a Contracting State. Every applicant shall be represented by an attorney, agent or legal practitioner who has the right to represent applicants before the industrial property office of the Contracting State with which the application is filed.

(2) The industrial property office with which the application is filed shall, without delay, transmit that application to the Office.

Section 3

Patents

(1) A patent application shall:

- (i) identify the applicant;
- (ii) contain, as prescribed, a description of the invention, a claim or claims, a drawing or drawings, where necessary, and an abstract;
- (iii) designate the Contracting States for which the patent is requested to be granted;
- (iv) be subject to the payment of the prescribed fees.

(2) (a) The Office shall examine whether the formal requirements for applications have been complied with and shall accord the appropriate filing date to the application.

(b) If the Office finds that the application does not comply with the formal requirements, it shall notify the applicant accordingly, inviting him to comply with the requirements within the prescribed period. If the applicant does not comply with the requirements within the said period, the Office shall refuse the application.

(c) The Office shall notify each designated State of the fact that a patent application has been filed which complies with the prescribed formal requirements.

(3) The Office shall undertake, or arrange for the substantive examination of the patent application. If it finds that the invention claimed in the application does not comply with the requirements of patentability referred to in subsection (9), it shall refuse the application.

(4) Where under subsection (2) (b) or (3) the Office refuses the application, the applicant may, within the prescribed period, request the Office to reconsider the matter.

(5) If the Office decides to grant the patent, it shall notify the applicant and each designated State. Where the examination was based on a search report or an examination report, a copy of the same shall be attached to the said notification.

(6) Before the expiration of six months from the date of the notification referred to in subsection (5), a designated State may make a written communication to the Office that, if a patent is granted by the Office, that patent shall have no effect in its territory for the reason

- (i) that the invention is not patentable in accordance with the provisions of this Protocol, or
- (ii) that, because of the nature of the invention, a patent cannot be registered or granted or has no effect under the national law of that State.

(7) After the expiration of the said six months, the Office shall grant the patent, which shall have effect in those designated States which have not made the communication referred to in subsection (6). The Office shall publish the patent granted.

(8) If the Office refuses the application notwithstanding a request for consideration under subsection (4), the applicant may, within three months from being notified of such refusal, request that his application be treated, in any designated State, as an application according to the national law of that State.

(9) Inventions for which patents are granted by the Office shall be new, shall involve an inventive step and shall be industrially applicable. An invention is new if it is not anticipated by prior art. Everything made available to the public anywhere in the world by means of written disclosure (including drawings and other illustrations) or by use or exhibition shall be considered prior art provided that such making available occurred before the date of filing of the application or, if priority is claimed, before the priority date validly claimed in respect thereof and further provided that a disclosure of the invention at an official or officially recognised exhibition shall not be taken into consideration if it occurred not more than six months before the date of filing of the application or, if priority is claimed, before the priority date validly claimed in respect thereof.

(10) On each anniversary of the filing of the application, the Office shall collect the prescribed annual maintenance fee, part of which shall be distributed among the designated States concerned. The amount of the fee shall depend on the number of States in respect of which the application or patent is maintained. Provided it is maintained, a patent granted by the Office shall in each designated State have the same effect as a patent registered, granted or otherwise having effect under the applicable national law but not beyond the maximum duration provided for under the said law.

(11) A patent granted by the Office shall in each designated State be subject to provisions of the applicable national law on compulsory licences, forfeiture or the use of patented inventions in the public interest.

Section 4

Industrial designs

(1) An application for the registration of an industrial design filed shall:

- (i) identify the applicant;
- (ii) contain a reproduction of the industrial design;
- (iii) designate the Contracting States for which the registration is requested to have effect;
- (iv) be subject to the payment of the prescribed fees.

(2) (a) The Office shall examine whether the formal requirements for applications have been complied with and shall accord the appropriate filing date to the application.

(b) If the Office finds that the application does not comply with the formal requirements, it shall notify the applicant accordingly, inviting him to comply with the requirements

within the prescribed period. If the applicant does not comply with the requirements within the said period, the Office shall refuse the application.

(c) The Office shall notify each designated State of the fact that an application for the registration of an industrial design has been filed which complies with the prescribed formal requirements.

(3) Before the expiration of six months from the date of the notification referred to in subsection (2) (c), each designated State may make a written communication to the Office that, if the industrial design is registered by the Office, that registration shall have no effect in its territory for the reason

- (i) that the industrial design is not new,
- (ii) that, because of the nature of the industrial design, it cannot be registered or a registration has no effect under the national law of that State, or
- (iii) that, in the case of a textile design, it is subject of a special register.

(4) After the expiration of the said six months, the Office shall affect the registration of the industrial design, which shall have effect in those designated States which have not made communication referred to in subsection (3). The Office shall publish the registration.

(5) If the Office refuses the application, the applicant may, within three months from being notified of such refusal, request that his application be treated, in any designated State, as an application according to the national law of that State.

(6) On each anniversary of the filing of the application, the Office shall collect the prescribed annual maintenance fee, part of which shall be distributed among the designated State concerned. The amount of the fee shall depend on the number of States in respect of which the application or registration is maintained. Provided it is maintained, the registration of an industrial design effected by the Office shall in each designated State have the same effect as a registration effected or otherwise in force under the applicable national law but not beyond the maximum duration provided for under the said law.

(7) An industrial design registered by the Office shall in each designated State be subject to the provisions of the applicable national law on compulsory licences or the use of registered industrial designs in the public interest.

Section 5

Regulations

(1) The Council of ESARIPO shall make Regulations for the implementation of this Protocol and may amend them, where necessary.

(2) The Regulations shall in particular relate to

- (i) any administrative requirements, matters of procedure, or any details necessary for the implementation of the provisions of this Protocol and any relevant international treaties;
- (ii) the fees to be charged by the Office and the details of the distribution of part of those fees among the Contracting States.

Section 6

Entry into force and final provisions

(1) (a) Any State which is a member of the Organisation or any State to which membership of the Organisation is open in accordance with Article IV (1) of the Agreement on the Creation of an Industrial Property Organisation for English-Speaking Africa may become party to this Protocol by:

- (i) signature followed by the deposit of an instrument of ratification, or
- (ii) deposit of an instrument of accession.

(b) Instruments of ratification or accession shall be deposited with the Government of the Republic of Zimbabwe.

(c) This Protocol shall enter into force three months after three States have deposited their instruments of ratification or accession.

(d) Any State which is not party to this Protocol upon its entry into force under subsection (1) (c) of this section shall become bound by this Protocol three months after the date on which such State deposits its instruments of ratification or accession.

(2) (a) Ratification of, or accession to, this Protocol shall entail acceptance of the Agreement on the Creation of an Industrial Property Organisation for English-Speaking Africa.

(b) The deposit of an instrument of ratification of, or accession to, this Protocol by a State which is not a party to the Agreement referred to in paragraph (a) of this subsection shall have the effect that the said State shall become party to the said Agreement on the date on which it deposits its instrument of ratification of, or accession to, this Protocol.

(3) (a) Any Contracting State may denounce this Protocol by notification addressed to the Government of the Republic of Zimbabwe.

(b) Denunciation shall take effect six months after receipt of the said notification by the Government of the Republic of Zimbabwe.

(c) Denunciation shall take effect six months after receipt of the said notification by the Government of the Republic of Zimbabwe. It shall not affect any patent application or application for the registration of an industrial design filed with the Office prior to the expiration of the said six-month period or any patent granted or registration of an industrial design effected upon such an application.

(4) (a) This Protocol shall be signed in a single copy and shall be deposited with the Government of the Republic of Zimbabwe.

(b) The Government of the Republic of Zimbabwe shall transmit certified copies of this Protocol to the Contracting States, other States members of the Industrial Property Organisation for English-Speaking Africa, and the States to which membership of the Organisation is open in accordance with Article IV (1) of the Agreement on the Creation of an Industrial Property Organisation for English-Speaking Africa, the World Intellectual Property Organisation and the United Nations Economic Commission for Africa.

PART TWO

Regulations for Implementing the Protocol on Patents and Industrial Designs

Within the Framework of the Industrial Property Organisation for English-Speaking Africa (ESARIPO)

Rule 1

Interpretation

In these Regulations, unless the context otherwise requires,

“**Administrative Instructions**” means the Administrative Instructions established by the Director of the ESARIPO Office in accordance with Rule 2 (5);

“**Application**” means an application for the grant of a patent or for the registration of an industrial design, as the case may be, under the provisions of the protocol;

“**Contracting State**” means any state that adheres to the Protocol;

“**designated State**” means a State designated, in accordance with Rule 5 (1) (f) in an application;

“**ESAPADIC**” means the patent Documentation information Centre of ESARIPO;

“**The ESARIPO Journal**” means the Journal published by ESARIPO as required in Rule 2 (4);

“**ESARIPO Office**” means the Office of the Industrial Property Organisation for English-Speaking Africa (ESARIPO);

“**Paris Convention**” means the Paris Convention for the Protection of Industrial Property of March 20, 1983 as last revised;

“**Protocol**” means the Protocol on Patents and Industrial Designs within the framework of the Industrial Property Organisation for English Speaking Africa (ESARIPO) adopted at Harare, Zimbabwe, on December 10, 1982.

Rule 2

Registers: The Journal; Administrative Instructions

(1) The ESARIPO Office shall maintain a Patents Register and an Industrial Designs Register in which shall be recorded, respectively, all patents granted and all industrial designs registered under the Protocol, and which shall contain the particulars the recording of which is provided for in those Regulations.

(2) The recording of a granted patent shall be effected, in order of grant, by the insertion in the Patents Register of a copy of the Patent.

(3) Any recording other than that of the granted patent shall be effected by recording, under the appropriate heading of a page in the Patents Register reserved for each patent, the fact or instrument to be recorded.

(4) The ESARIPO Office shall publish a Journal in which it shall effect all the publications provided for in the Protocol and these Regulations. The Journal shall be published quarterly.

(5) (a) The Director of the ESARIPO OFFICE shall establish Administrative Instructions which shall deal with details in respect of the application of these Regulations and which shall not be in conflict with the provisions of the Protocol and these Regulations.

(b) The Administrative Instructions shall be modified by the Director of the ESARIPO Office upon the request of the ESARIPO Council.

Rule 3

Inspection of Files

(1) Subject to paragraph (2), any person may, upon payment of the prescribed fees, consult the Patents Register and the Industrial Designs Register or obtain copies of extracts therefrom.

(2) (a) The file relating to a patent application may be inspected and extracts therefrom obtained before the grant of the patent only with the written permission of the applicant.

(b) Even before the grant of the patent, the ESARIPO Office shall, on request, communicate the following bibliographic data:

- (i) the name and address of the applicant and the name and address of the agent;
- (ii) the number of the application;
- (iii) the filing date of the application and, if priority is claimed, the priority date, the number of the earlier application was filed or where the earlier application is a regional or international application, the name of the State or States for which it was filed as well as the office with which it was filed;
- (iv) the title of invention;
- (v) any change in the ownership of the application and any reference to a licence contract appearing in the file of the application.

(c) Where an application is withdrawn in accordance with Rule 17, the file relating to it may be inspected only with the written permission of the person who withdrew the application, and subparagraph (b) shall not apply.

(3) The inspection of files of the ESARIPO Office by the Courts or authorities of Contracting States shall be by the provision of copies of the relevant documents or extracts of the relevant entries.

Rule 4

Patent Information Services

The ESARIPO Office shall, through ESAPADIC, provide upon request, patent information services to users of patent information in member and potential member States or ESARIPO for the purpose of facilitating the adaptation, transfer and acquisition of appropriate technology, the development of local research and the creation of endogenous technology.

Rule 5

Form and Contents of Patent Application

(1) The application for a patent shall contain:

- (a) a request;
- (b) a description;
- (c) one or more claims;
- (d) one or more drawings (where necessary);

- (e) an abstract; and
- (f) a designation of the Contracting States in respect of which the patent is requested to be granted.

(2) The application shall be in English language and any document forming part of the application and which is in a language other than English shall be accompanied by an English translation.

(3) The request shall be made on a printed form copies of which shall be obtainable from the ESARIPO Office from the industrial property offices of Contracting States.

(4) (a) The printed form shall contain a list which, when filled in will show:

- (i) The total number of sheets constituting the application and the number of sheets of each element of the application (request, description, claims, drawings; abstract);
- (ii) whether or not the application as filed is accompanied by a power of attorney, a priority document, a receipt for the fee paid or an undertaking to pay the requisite fees, a statement justifying the applicant's right to the patent and any other document (to be specified in the check list);
- (iii) the number of the most illustrative drawing which the applicant suggests should accompany the abstract when the abstract is published.

(b) The list shall be filled in by the applicant, failing which the ESARIPO Office shall fill it in and make the necessary annotations.

(5) The request, which shall be signed by the applicant, shall contain:

- (a) a petition which shall appear on the printed form;
- (b) the title of the invention which shall be short (preferably from two to seven words) and precise;
- (c) the name, address (including, where applicable, telegraphic and telex address and telephone number) and nationality of the applicant and the State in which his residence or principal place of business is located; names of natural persons shall be indicated by the person's family name and given name(s), the family name being indicated before the given name (s); name of legal entities, shall be indicated in such a way as to satisfy the customary requirements for prompt postal delivery at the indicated address; they shall in any case comprise all the relevant administrative units, including the house number, if any;
- (d) the name, address and place of business of the applicant's representative (particulars as in (c) above);
- (e) where the applicant is the inventor, a statement of that effect and where he is not, the name and address of the inventor accompanied by a statement specifying the basis of the applicant's right to the patent; and
- (f) where applicable, a declaration of priority.

Rule 6

Contents of the Description

(1) The description shall:

- (a) first state the title of the inventions as appearing in the request;
- (b) specify the technical field to which the invention relates;

- (c) indicate the background art which, as far as known to the applicant, can be regarded as useful for the understanding, searching and exemption of the invention, and preferably, cite the documents reflecting such art;
- (d) disclose the invention in such terms that it can be understood, and state its advantageous effects, if any, with reference to the background art;
- (e) briefly describe the figures in the drawings, if any;
- (f) set forth at least the best contemplated by the applicant for carrying out the invention; this shall be done in terms of examples, where appropriate, and with reference to the drawings, if any; and
- (g) indicate explicitly, when it is not obvious from the description or nature of the invention, the way in which the invention is industrially applicable and the way in which it can be made and used, or if it can only be used, the way in which it can be used.

(2) The manner and orders specified in this Rule shall be followed except when, because of the nature of the invention, a different manner or a different order would result in a better understanding and a more concise presentation.

Rule 7

Contents of the Claims

(1) The claims shall define the matter for which protection is sought in terms of the technical features of the invention. The number of the claims shall be reasonable, taking into account the nature of the invention, and where there are several claims, they shall be numbered consecutively in Arabic numeral. Wherever appropriate, claims shall contain:

- (a) a statement indicating those technical features of the invention which are necessary for the definition of the latter but which, in combination, are part of the prior art, and
- (b) a characterising portion—preceded by the words “characterised in that”

(2) Claims shall not, except where absolutely necessary, rely, in respect of the technical features of the invention, on references to the description or drawings. In particular, they shall not rely on such references as: “as described in part...of the description,” or “as illustrated in figure...of the drawings.”

“characterised by”, wherein the improvement comprises”, or any other words to the same effect—stating concisely the technical features which, in combination with the features stated under (a), it is desired to protect.

Rule 8

Declaration of Priority

(1) The application may contain a declaration claiming, in respect of one or several designated States, the priority, as provided for in the Paris Convention, of one or more earlier national, regional or international applications filed by the applicant or his predecessor in title in or for any State party to the Paris Convention. The declaration shall indicate:

- (i) the date of the earlier application;
- (ii) the number of the earlier application, subject to paragraph (2);
- (iii) the name of the State in which the earlier application was filed or where the earlier application is a regional or an international application, the name of the States for which it was filed; and

- (iv) where the earlier application is a regional or an international application, the office with which it was filed.
- (2) Where at the time of filing the declaration referred to in paragraph (1) the number of the earlier application is not known that number shall be furnished within three months from the date on which the application containing the declaration was filed.
- (3) The applicant may, at any time before the grant of the patent, amend the contents of the declaration.
- (4) The applicant shall, within a period of three months from the filing of the application containing the declaration furnish a copy of the earlier application, certified as correct by the office with which it was filed.
- (5) Where the earlier application is in a language other than English, the applicant shall within a period of six months from the filing of the application containing the declaration furnish an English translation.
- (6) If the requirements under the rule have not been complied with, the declaration shall be disregarded.

Rule 9

Application for the Registration of Industrial Designs

The Rules relating to patent applications shall, *mutatis mutandis*, apply to applications for the registration of industrial designs filed under Section 4 of the Protocol.

Rule 10

Filing of Application; Authorization of Representative

- (1) Subject to Rule 11, any application may be filed with the industrial property office of any Contracting State.
- (2) The authorisation of the applicant's representative shall be evidenced by a power of attorney issued and signed by the applicant and filed together with the application of filed within a period of two months after the filing of the application.

Rule 11

Fees to Be Paid

- (1) The fees to which applications are subject, and the amounts of such fees, shall be as set out in the Schedule of Fees which is annexed to these Regulations and forms part thereof, as well as in the Administrative Instructions.
- (2) Subject to paragraph (3), fees shall be paid in U.S. dollars direct to the ESARIPO Office and the application shall be accompanied by an undertaking signed by the applicant that he will effect payment to the ESARIPO Office within a period of 21 days from the date on which the application is filed with the industrial property Office of a Contracting State.
- (3) (a) Notwithstanding paragraph (2), where the applicant is a national of the Contracting State in which the application is filed, the industrial property office concerned may
- (i) accept payment of the fees in local currency equivalent, at the prevailing official rate of exchange to the prescribed fees; and
 - (ii) request the ESARIPO Office to debit its amount in ESARIPO with the amount of such fees.

(b) The ESARIPO Office shall be bound by the decision taken by the industrial property office of a Contracting State concerning the applicability of this paragraph with regard to the nationality of the applicant.

Rule 12

Distribution of Fees

(1) The distribution of fees between the ESARIPO Office and Contracting States shall be as follows:

- (a) 5% of the application fee shall be due to the Contracting State in which the application is filed and 95% shall be due to the ESARIPO Office;
- (b) 50% of the designation fee shall be due to each designated State and 50% shall be due to the ESARIPO Office.
- (c) 50% of the annual maintenance fee shall be due to the designated State and 50% shall be due to the ESARIPO Office.

(2) Fees due to Contracting States shall be held in their favour or, on request, transmitted to them by the ESARIPO Office.

Rule 13

Transmittal of Application

The industrial property office with which the application was filed shall:

- (i) verify that the application on the face of it fulfils the requirements of Rule 5 (1) (a), (b) and (c);
- (ii) verify that the undertaking with respect to fees has been submitted or that the fees have been paid and a receipt issued therefore;
- (iii) mark on each document making up the application the actual date of the receipt, and appropriate number and its official stamp;
- (iv) issue to the applicant's representative an acknowledgement of receipt of the application; and
- (v) promptly transmit all documents making up the application to the ESARIPO Office.

Rule 14

Filing Date

(1) The ESARIPO Office shall accord as the filing date on which the application was received by the industrial property office with which the application was filed, provided that the application on the face of it fulfils the requirements of Rule 5 (1) (a), (b) and (c); if on the date on which the application was received by the industrial property office with which the application was filed the application on the face of it did not fulfil the requirements of rule (5) (1) (a), (b) and (c), the ESARIPO Office shall accord as the filing date the date on which the application on the face of it fulfilled the requirements of Rule (5) (1), (a), (b) and (c).

(2) The ESARIPO Office shall notify the applicant and industrial property office of each designated State of the filing date of the application.

Rule 15

Examination as to Formal Requirements

(1) Upon receiving the application, the ESARIPO Office shall examine it for compliance with the requirements of Section 3 (1) of the Protocol, Rules 5, 6, 7, 8, 10 and 11, and the Administrative Instructions, and ascertain whether the requisite fees have been paid.

(2) Where the ESARIPO Office finds that the application does not comply with the said requirements, it shall invite the applicant to correct the application within a period of two months.

(3) If the applicant fails to comply with the invitation referred to in paragraph (2) and the ESARIPO Office refuses the application under Section 3 (2) (b) of the Protocol, a request by the applicant, pursuant to Section 3 (4), that the ESARIPO Office reconsider its decision may be submitted in writing within two months and shall state the applicant's grounds for requesting such consideration.

Rule 16

Information Concerning Corresponding Foreign Applications, Patents or Other Titles of Protection

(1) The applicant shall, at the request of the ESARIPO Office, and within the period specified in such request, furnish it with the date and number of any application for a patent or other title of protection files by him with a national industrial property office or with a regional industrial property office (foreign application) relating to the same or essentially the same invention as that claimed in the application being processed by the ESARIPO Office.

(2) (a) The applicant shall, at the request of the ESARIPO Office and within the period specified in such request, furnish it with the following documents relating to one of the foreign applications referred to in paragraph (1):

- (i) a copy of any communication received by the applicant concerning the results of any search or examination carried out in respect of the foreign applications;
- (ii) a copy of the patents or other title of protection granted on the basis of the foreign application;
- (iii) a copy of any final decision rejecting the foreign application or refusing the grant requested in the foreign application.

(b) The applicant shall the request of the ESARIPO Office, furnish it with a copy of any final decision invalidating the patent or other title of protection granted on the basis of the foreign application referred to in paragraph (a).

(3) The applicant shall, at the request of the ESARIPO Office, furnish it with the following documents relating to any foreign application other than the one referred to in paragraph (2):

- (i) 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 and in which publications or other documents establishing the prior art are mentioned;
- (ii) a copy of any final decision rejecting the foreign application or refusing the grant requested in the foreign application.

(4) The documents furnished under this Section shall merely serve the purpose of facilitating the evaluation of the novelty and inventive step of the invention claimed in the application being processed by the ESARIPO Office or in the patent granted on the basis of that application.

(5) The applicant shall have the right to submit comments on the documents furnished under this Rule.

Rule 17

Withdrawal of Application

The applicant may withdraw the application at any time during its pendency by submitting a written declaration to the ESARIPO Office.

Rule 18

Examination as to Substance

(1) For the purposes of the examination under section 3 (3) of the Protocol, the ESARIPO Office may transmit the application together with all relevant documents to an authority specified in the Administrative Instructions.

(2) A search and examination report shall be established by the ESARIPO Office or by the authority referred to in paragraph (1) and shall contain the conclusions of the examination of the application.

(3) Where taking due account of the conclusions of the search and examination report referred to in paragraph (2), the ESARIPO Office reaches the conclusion that any of the requirements referred to in Section 3 (3) of the Protocol are not fulfilled, it shall notify the applicant accordingly and invite him submit within a specified period, his observations and, where applicable, an amended application together with a request in accordance with Section 3 (4) of the Protocol that, the matter be reconsidered.

(4) Where the ESARIPO Office, taking due account of the search and examination report, decides to grant the patent pursuant to Section 3 (5) of the Protocol, it shall, by a notification to which shall be attached a copy of the search and examination report upon which the decision is based, communicate the decision to the applicant and the industrial property office of each designated State, and request the applicant to make payment of the grant and publication fee, within the period it shall specify.

(5) A communication by designated State pursuant to Section 3 (6) of the Protocol shall be made on its behalf by its industrial property office.

(6) Within two weeks of receiving any such communication, the ESARIPO Office shall promptly transmit a copy thereof to the applicant.

Rule 19

Request for Conversion into a National Patent Application

(1) A request by the applicant, pursuant to Section 3 (8) of the Protocol, that the application be treated as an application under the national law of one or more of the designated States, may be filed within three months from the date of the refusal by the ESARIPO Office of the request for the reconsideration, and shall specify the designated States in which the procedure for the grant of a national patent is desired.

(2) Within two weeks of receiving the request, the ESARIPO Office shall transmit copies of the application, and all relevant documents, to the industrial property offices of the designated States specified by the applicant.

Rule 20

Grant; Recordal and Publication

(1) Upon the expiry of the period of six months provided for in Section 3 (6) and subject to payment of the grant and publication fee, the ESARIPO Office shall in accordance with Section 3 (7) of the Protocol;

- (a) grant the patent;
- (b) publish in the ESARIPO Journal a reference to the grant;
- (c) record the patent in the Patents Register;
- (d) issue to the applicant a certificate of the grant of the patent and a copy of the patent;
- (e) transmit to each designated State for which the patent is granted a copy of the certificate and a copy of the patent.

(2) The publication of a reference to the grant in the ESARIPO Journal shall include the following:

- (a) the number of the patent;
- (b) the name and address of the owner of the patent;
- (c) the name and address of the inventor;
- (d) the name and address of the applicant's representative;
- (e) the filing date of the application;
- (f) if priority has been claimed and the claim has been accepted, a statement of that priority, the priority date and the name of the country or countries in which or for which the earlier application was filed;
- (g) the effective date of the grant of the patent;
- (h) the title of the invention;
- (i) the abstract;
- (j) if there are drawings, the most illustrative drawing;
- (k) the symbol of the International Patent Classification;
- (l) the Contracting States for which the patent is granted;

(3) The Certificate of Grant, which shall be signed by the Director of the ESARIPO Office, shall contain;

- (a) the number of the patent;
- (b) the name and address of the owner of the patent;
- (c) the filing date and priority date, if any, of the application;
- (d) the effective date of the grant of the patent;
- (e) the title of the invention.
- (f) the Contracting States for which the patent is granted.

Rule 21

Payment of Annual Maintenance Fees

- (1) The amount of annual maintenance fees payable under section 3 (10) of the Protocol shall be as prescribed in the Schedule of Fees.
- (2) The annual maintenance fees shall fall due on the eve of each anniversary of the date of filing of the application and shall be paid in advance to the ESARIPO Office.
- (3) The ESARIPO Office shall, at least one month prior to the date on which an annual maintenance fee shall fall due, issue a reminder to the applicant or the owner of the patent.
- (4) Subject to the payment of the prescribed surcharge, a period of grace of six months shall be allowed for the payment of the annual maintenance fee.
- (5) If an annual maintenance fee is not paid in accordance with this Rule, the application shall be deemed to have been withdrawn or the patent shall lapse.
- (6) The ESARIPO Office shall record each lapsed patent in the Patents Register and publish a notification of the lapse in the ESARIPO Journal.

Rule 22

General Provisions

- (1) Communications between the ESARIPO Office and the industrial property offices of Contracting States on matters relating to the Protocol and these Regulations shall be effected direct and by the registered air mail.
 - (2) Communications between the ESARIPO Office and the Courts or other authorities of Contracting States on matters relating to the Protocol and these Regulations shall be effected through the intermediary of the industrial property office of the said States and shall be subject to the Rule 22 (1).
 - (3) The Industrial property offices of designated States of which the national laws provide for the registration of licenses, assignments and other similar rights pertaining to patents and industrial designs shall, upon registering such rights with respect to a patent or an industrial design granted, registered or applied for under the protocol, promptly provide the ESARIPO Office with particulars or such registrations.
 - (4) The ESARIPO Office shall record in the Patents Register or the Industrial Designs Register, as the case may be, all notifications made under Rule 22 (3).
 - (5) The ESARIPO shall, in accordance with the procedure set out in the Administrative Instructions, register assignments, licenses and other similar rights pertaining to patents or industrial designs granted, registered or applied for under the protocol with respect to designated States of which the national laws do not provide for such registrations.
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SCHEDULE OF FEES

Patents

	<i>Kind of Fees</i>	<i>Amount (US Dollars or, where Rule 11 (3) (a) applies, the equivalent)</i>
1.	Application fee	150
2.	Designation fee per country designated	50
3.	Grant and Publication fee	250
4.	Annual maintenance fee in respect of each designated state	
	1st anniversary	40
	2nd anniversary	50
	3rd anniversary	60
	4th anniversary	70
	5th anniversary	80
	6th anniversary	90
	7th anniversary	100
	8th anniversary	110
	9th anniversary	120
	10th anniversary	130
	11th anniversary	140
	12th anniversary	150
	13th anniversary	160
	14th anniversary	170
	15th anniversary	180

For each year thereafter an additional US \$ 10

Surcharge for late payment of annual maintenance fee (Rule 21 (4) 20% of the fee specified).

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| 5. | Consultation of Registers | 2 |
| 6. | Request for copies of extracts from Register or from files | 0.50 per page |

SCHEDULE OF FEES—*continued*

	<i>Kind of Fees</i>	<i>Amount (US Dollars or where Rule 11 (3) (a) applies, the equivalent)</i>
1.	Application fee	50
2.	Designation fee per country designated	10
3.	Annual maintenance fee in respect of each designated State	
	1st	10
	2nd	12
	3rd	14
	4th	16
	5th	18
	6th	20
	7th	24
	8th	28
	9th	32
	10th	36

3. Commencement

This Law shall be deemed to have come into force on the 25th day of April, 1984.