

# INTELLECTUAL PROPERTY BILL 2011

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**2011, No.**  
**A BILL INTITULED**

**AN ACT** to provide protection for trademarks, patents, utility models, plant varieties, industrial designs, geographical indications and circuit layout design, in Samoa, and for related matters.

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

**PART I**  
**PRELIMINARY**

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

(2) This Act commences on the date of assent of the Head of State.

**2. Interpretation** - In this Act, unless the context provides otherwise:

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

“**applicant**” includes the person’s predecessor in title;

“**Convention country**” means a country which is a member of the Paris Convention;

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

“**court**” means the Supreme Court;

“**industry**” includes the handicraft, agriculture, fishery, pharmaceuticals and services industry;

“**determined fees**” means the fees determined under section 110;

“**Minister**” means the Minister responsible for Commerce, Industry and Labour;

“**Ministry**” means the Ministry of 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;

“**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;

**“reciprocating country”** means —

- (a) any State which is a party to the International Union for the Protection of New Varieties of Plants Convention, signed at Paris, France, on the 2nd December, 1961; or
- (b) any other treaty to which Samoa is also a party and which provides for the protection of rights in plant varieties; or
- (c) any State which is not a party to the Convention or to a treaty referred to in paragraph (a) and (b) but which, in the Registrar’s opinion, effectively protects rights in plant varieties held by—
  - (i) individuals who are citizens or residents of Samoa; or
  - (ii) companies or bodies corporate which carry on business in Samoa or have their principal offices there;

**“registers”** means the registers kept pursuant to section 101;

**“Registrar”** means the Chief Executive Officer of the Ministry and includes any duly appointed delegate;

**“Registry”** means Intellectual Property Registry established under section 101;

**“repealed Enactments”** means the Acts repealed under section 115;

**“trade name”** means the name or designation identifying and distinguishing a business;

**“traditional resource”** includes indigenous biological resource, genetic resource or traditional knowledge or use.

## **PART II PATENTS**

### **3. Definition of “patent” and “invention” - (1) In this Act:**

- (a) **“patent”** means the title granted to protect an invention;
  - (b) **“invention”** means an idea of an inventor which permits in practice the solution to a specific problem in the field of technology;.
- (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; or
- (b) a scheme, rule or method for performing a mental act, playing a game or doing business; or
- (c) diagnostic, therapeutic and surgical methods for the treatment of humans or animals, and products for use in any of those methods; or
- (d) inventions that are contrary to public order or morality; or
- (e) plants and animals, other than micro-organisms; or
- (f) essentially biological processes for the production of plants or animals, other than microbiological processes; or
- (g) inventions that are likely to cause serious environmental harm.

**4. Patentable inventions -** (1) An invention is patentable if:

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

(2) An invention shall be taken to be new if on or before the effective date of the application the invention was not—

- (a) known or used anywhere in Samoa by anyone other than the applicant's agent or the person from or through whom the applicant obtained his or her right or title: Provided that secret knowledge or secret user otherwise than on a commercial scale shall be disregarded; or
- (b) worked anywhere in Samoa otherwise than by way of reasonable technical trial or experiment by the applicant or any person from or through whom such applicant obtained his right or title; or
- (c) described in a patent specification available to public inspection in accordance with this Act; or
- (d) described in writing or in any other way in any publication of which there was a copy anywhere in or outside Samoa at the effective date of the application; or
- (e) claimed in any complete specification for a patent which was lodged in accordance with this Act and which, though not available to public inspection at the effective date of the application, was deposited pursuant to an application for a

patent which is, or will be, of prior date to the date of any patent which may be granted in respect of the said invention.

(3) An invention shall be considered as involving an inventive step if, it would not have been obvious to a person having ordinary skill in the art.

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

**5. Right to patent-** (1) The right to a patent belongs to the inventor.

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

(3) Where 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 employer unless a contractual provision says otherwise.

**6. Naming of inventor -** (1) Subject to subsection (2), the inventor must be named in the patent.

(2) Despite subsection (1), the inventor may write to the Registrar declaring that he or she not be named.

(3) Upon the receipt of a declaration in subsection (7), the Registrar must not name the inventor in the patent.

(4) Any promise or undertaking by the inventor made to any person to the effect that the inventor will make a declaration under subsection (2) is of no legal effect.

(5) Any contractual provision which is less favourable to the inventor than the provisions of this section shall have no legal effect.

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

(2) An application must be accompanied by a determined 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) a request for the grant of the patent; and
  - (c) a description of the invention including the title of the invention; and
  - (d) one or more claims and any drawings referred to in the description of any claim; and
  - (e) an abstract; and
  - (f) a statement stating whether or not the invention for which protection is claimed is based on or derived from an indigenous biological resource, genetic resource, or traditional knowledge or use.

(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 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 at least one mode known to the applicant for carrying out the invention.

- (6) A claim 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 must be provided to the Registrar where he or she thinks it is necessary for the understanding of the invention.

(8) The description and the drawings may be used to interpret the claim.

(9) The abstract must not be taken into account for the purpose of interpreting the scope of the protection.

(10) Subject to subsection (11), where the application is based on or derived from a traditional resource the Registrar may direct the applicant to furnish evidence as to his or her title or authority to make use of the traditional resource.



(11) The Registrar shall only direct an applicant for evidence under subsection (10) where the applicant makes a statement acknowledging that the invention for which protection is claimed is based on or derived from a traditional resource.

(12) Where an applicant fails to provide proof as directed by the Registrar under subsection (10), the Registrar may revoke the patent or cease to deal further with the application.

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

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

- (1) An application must relate to one 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 review process.

(3) Despite subsection (2), an amendment must not go beyond the disclosure in the initial application.

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

(5) Despite subsection (4), the divisional application must not go beyond the disclosure in the initial application.

(6) Each 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) An applicant 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 examination** - (1) Subject to subsection (2), the Registrar must accord as the filing date, the date and time upon which he or she receives the application.

(2) Despite subsection (1), the Registrar may accord the filing date only where the application fee is paid and the application contains -

- (a) the name, address and nationality of the applicant;
- (b) a part which on the face of it appears to be a description;
- (c) a part which on the face of it appears to be a claim;
- (d) an express or implicit indication that the grant of a patent is sought.

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

(4) Where a correction is made, the Registrar shall accord the filing date as being the date upon which he or she received the correction from the applicant.

(5) Where 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) Where 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 4 (1) to (2); and

- (b) whether any information requested under section 10, has been provided.

(9) 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 3(2) and (3), 4, 7 ((5), (6) and (7) and (8) are fulfilled and for this purpose may cause the application to be examined.

(10) 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 section 10, the Registrar must grant the patent.

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

- (a) publish a reference to the grant of the patent; and
- (b) issue to the applicant a certificate of the grant of the patent and a copy of the patent; and
- (c) record the patent; and
- (d) make available copies of the patent to the public, on payment of the determined 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 where it results in the disclosure contained in the patent going beyond the disclosure contained in the initial application for which the patent was granted.

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

- (a) refuse the application; and

- (b) notify the applicant in writing of the decision.

**12. Rights conferred by patent** - (1) Any person intending to exploit a patented invention in Samoa must first obtain the consent of the owner of the patent.

(2) For the purposes of 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;
  - (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;
  - (ii) doing any of the acts referred to in paragraph (a) in respect of a product obtained directly by means of the process.

(3) Subject to subsection (4) and section 14, 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 (2) or who performs acts which make it likely that infringement will occur.

- (4) (a) The rights under the patent do not extend -
  - (i) to acts in respect of articles which have been put on the market in Samoa by the owner of the patent or with the owner’s consent; and
  - (ii) 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
  - (iii) to acts done only for experimental purposes relating to a patented invention; and
  - (iv) to acts performed by any person who in good faith, before the filing or, where 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.
- (b) The right of prior user referred to in paragraph (a)(iv) 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), 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 maintenance fee must be paid in advance every 5 years to the Registrar starting one year after the filing date of the application for grant of the patent.

(3) A grace period of 6 months is allowed for the late payment of the 5 yearly maintenance fee.

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

**14. Exploitation by Government or authorised person** - (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,

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 exploitation of the invention is:
  - (a) limited to the purpose for which it was authorized; and
  - (b) is subject to the payment to the owner of adequate remuneration; and
  - (c) where a decision has been taken under subsection (1)(b), is for the purpose of the need to correct anti-competitive practices.

(3) 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.

- (4) Upon the request of:
  - (a) the owner of the patent; or

- (b) the Government agency; or
- (c) of the third person authorized to exploit the patented invention,

the Minister may, after hearing any party wishing to be heard, vary the terms of the decision authorizing the exploitation of the patented invention where the Minister considers that the circumstances justify the variation.

(5) Subject to subsection (6), the Minister must terminate an authorisation upon the request of the owner of the patent, where 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 the authorization has failed to comply with the terms of the decision.

(6) Despite subsection 5, the Minister must not terminate the authorization 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 authorization.

(7) If a third person has been designated by the Minister under subsection (1), the authorization 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.

(8) The authorization must not exclude -

- (a) the conclusion of licence contracts by the owner of the patent;
- (b) the continued exercise, by the owner of the patent, of the rights under section 12(2); or
- (c) the issue of a compulsory licence under section 15 (1) and (2).

(9) Subject to subsection 10, any person intending to obtain the Minister's authorization 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.

(10) Despite subsection (9), proof will not be required in cases of national emergency or other circumstances of extreme urgency.

(11) Where authorization 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.

(12) 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.

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

- (a) public non-commercial use; or
- (b) where 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.

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

**15. Non-voluntary licences -** (1) The Registrar, upon the request of the owner of a later patent, may grant a compulsory licence where:

- (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 compulsory licence is subject to payment of the determined 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.

**16. Invalidation** - (1) Any interested person may apply to the Supreme Court to invalidate a patent.

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

- (a) any of the requirements of sections 4(1) and (2), 7, 8, 9 and 10 is not fulfilled; or
- (b) the owner of the patent is not the inventor or the inventor’s successor in title.

(3) Any invalidated patent, or claim or part of a claim, has no legal effect from the date of the grant of the patent.

(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 Registry at the earliest opportunity.

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

**17. 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 shall not be put on the market before the expiry date of the patent.

(3) Where test batches of a patented product have been produced under subsection (1), the term of the patent of the original product shall not be extended.

**18. Access and benefit sharing** - The Head of State may make regulations for the purpose of effecting any arrangements for access and benefit sharing in relation to patents registered under this Act.

### **PART III**

#### **UTILITY MODEL CERTIFICATES**

**19. Applicability of provisions pertaining to patents** - (1) The provisions of Part II shall apply, with necessary modifications, to utility model certificates or applications.



**20. Special provisions pertaining to utility model certificates -**

(1) An invention qualifies for a utility model certificate if it is new and is industrially applicable.

(2) A utility model certificate shall expire, without possibility of renewal, at the end of the seventh year after the date of the filing of the application.

(3) In proceedings under section 16 the Registrar shall invalidate the utility model certificates on the following grounds that:

- (a) the claimed invention did not qualify for a utility model certificate; or
- (b) the description and the claims do not comply with the requirements of sections 4(1) and (2), 7, 8, 9 and 10; or
- (c) any drawing which is necessary for the understanding of the invention has not been furnished; or
- (d) the owner of the utility model certificate is not the inventor or his or her successor in title.

**21. Conversion of applications of patent or utility model certificates -** (1) At any time before the grant or rejection of a patent, an applicant for a patent may, upon payment of the determined fee, convert his or her application into an application for a utility model certificate, which shall be accorded the filing date of the initial application.

(2) At any time before the grant or rejection of a utility model certificate, an applicant for a utility model certificate may, upon payment of the determined fee, convert his or her application into a patent application, which shall be accorded the filing date of the initial application.

(3) An application may not be converted under subsection (1) more than once.

**PART IV  
INDUSTRIAL DESIGNS**

**22. Definition of “industrial design” -** (1) An industrial design is:

- (a) a composition of lines or colours or any three-dimensional form, whether or not associated with lines or colours; and
- (b) which has a special appearance to a product of industry.

(2) Protection under this Act does not apply to anything in an industrial design which serves solely to obtain a technical result and to the extent that it leaves no freedom as regards arbitrary features of appearance.

**23. Registrable industrial design** - (1) An industrial design is registrable if it is new.

(2) An industrial design shall be 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 or by use or in any other way, prior to the filing date or, where applicable, prior to the priority date of the application for registration.

(3) Industrial designs that are:

- (a) contrary to public order or morality;
- (b) based on traditional designs, 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 authorized by the competent authority of that State or organisation,

are not registrable.

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

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

(3) Where 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 patent, 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 employer unless a contractual provision says otherwise.

**25. Naming of creator** - (1) Subject to subsection (2), the creator must be named in registered design.

(2) Despite subsection (1), the creator may write to the Registrar declaring that he or she not be named.

(3) Upon the receipt of a declaration in subsection (7), the Registrar must not name the creator in the registered design.

(4) Any promise or undertaking by the creator made to any person to the effect that the creator will make a declaration under subsection (2) is of no legal effect.

(5) Any contractual provision which is less favourable to the creator than the provisions of this section shall have no legal effect.

**26. Application for registration** - (1) An application for the registration of an industrial design must be filed with the Registrar and be accompanied by the determined application fee.

(2) An application for registration of an industrial design must contain -

- (a) the applicant's name, address and nationality;
- (b) a request for registration of the design;
- (c) drawings, photographs or other adequate graphic representations of the article embodying the industrial design;
- (d) an indication of the kind of products for which the industrial design is to be used under the classifications in Schedule 1.

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

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

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

(7) An application may contain a request that the publication of the industrial 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.

(8) An applicant for the registration of an industrial design may withdraw the application at any time during its review.

**27. Examination, registration and publication of industrial design** - (1) If at the time of receipt, the applicant meets the requirements of

section 23, 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 23 (1) to (3) and must examine the industrial design for compliance with the requirements of this Part.

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

- (a) register the industrial design; and
- (b) subject to subsections (5) and (6), publish a reference to the registration; and
- (c) issue to the applicant a certificate of registration of the industrial 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) Where a request is made under section 26 (7) for deferment of publication, upon registration of the industrial design, neither the representation of the design nor any file relating to the application is to be open to public inspection.

(6) The Registrar must publish a notice of the deferment of the publication of the industrial design which must contain information identifying the registered owner, the filing date of the application, the length of the period for which deferment has been requested.

(7) At the expiry of the period of deferment, the Registrar must publish the registered industrial design.

**28. Rights conferred by registration** - (1) Any person intending to exploit a registered industrial design in Samoa must first obtain the consent of the creator of the design.

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

(3) (a) The rights under the registered industrial design do not extend -

- (i) to acts in respect of articles which have been put on the market in Samoa by the owner of the design or with the owner's consent; and
- (ii) 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

- (iii) to acts done only for experimental purposes relating to a registered design; and
  - (iv) to acts performed by any person who in good faith, before the filing or, where priority is claimed, the priority date of the application on which the registered design is granted, was using the design or was making effective and serious preparations for such use in Samoa.
- (b) The right of prior user referred to in paragraph (a)(iv) 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.
- (4) The registered owner of an industrial design has the right to commence court proceedings against any person who infringes the industrial design by performing, without the owner's consent, any of the acts referred to in subsection (2) or who performs acts which make it likely that infringement will occur.

**29. Duration; Renewal** - (1) The registration of an industrial design is for a period of 10 years from the filing date of the application for registration.

(2) The registration of an industrial design may be renewed for two further consecutive periods of 10 years by the payment of the determined renewal fee.

(3) A grace period of 6 months is allowed for the late payment of the renewal fee.

**30. Invalidation** - (1) Any interested person may request the Supreme Court to invalidate the registration of an industrial design.

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

- (a) any of the requirements of sections 23 and 26 are not fulfilled; or
  - (b) if the registered owner of the industrial design is not the creator or the creator's successor in title.
- (3) Any invalidated design, or claim or part of a claim, has no legal effect from the date of the registration of the design.
- (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 Registry at the earliest opportunity.

(5) Any 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.

**31. Licensing of designs** - (1) A licence contract concerning the registration of an industrial design, or of an application for registration, must provide for effective control by the licensor of the quality of the goods or services of the licensee in connection with which the design is used.

(2) If the licence contract does not provide for quality control or if such quality control is not effectively carried out, the licence contract is not valid.

(3) A licence under this section may be registered by the licensee with the Registrar upon the payment of a determined fee.

(4) The Registrar must keep a register for the purpose of registering any licence under this section.

## **PART V MARKS AND COLLECTIVE MARKS**

**32. Definition of “mark” and “collective mark”** - For the purposes of this Act –

- (a) **“mark”** means any visible sign capable of distinguishing the goods or services of a business from another;
- (b) **“collective mark”** means any visible sign designated as such in the application for registration and capable of distinguishing the origin or any other common characteristic, including the quality, of goods or services of different businesses which use the sign under the control of the registered owner of the collective mark;
- (c) **“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 or scent.

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

**34. Registrability** - (1) A mark must not be registered -

- (a) subject to subsection 2, if it is incapable of distinguishing the goods or services of one business from those of other business;
- (b) if it is contrary to public order or morality;

- (c) if it is likely to mislead, in particular as regards the geographical origin of the goods or services concerned or their nature or characteristics;
  - (d) if it is 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 authorized by the competent authority of that State or organisation;
  - (e) if it is identical with, or confusingly similar to, or constitutes a translation of, a mark or trade name which is well known in Samoa for identical or similar goods or services of another business;
  - (f) if it 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 that use of the 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;
  - (g) if it is identical with 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 goods or services or closely related goods or services, or if it so nearly resembles such a mark as to be likely to deceive or cause confusion; or
  - (h) if it is based on traditional designs, matai titles, names of persons or Samoan villages, or religious words or symbols.
- (2) Despite, subsection (1)(a), a non-distinctive mark may still be registered where it becomes distinctive through use.
- (3) Any person who contravenes the provision of this section commits an offence.

**35. Application for registration** - (1) An application for the registration of a mark must be filed with the Registrar and accompanied by the determined fee.

- (2) An application for the registration of a mark must contain -
- (a) the applicant's name, address and nationality;
  - (b) a request for registration of the mark;
  - (c) a reproduction of the mark;

- (c) a list of the goods or services for which registration of the mark is requested, listed under the applicable class or classes of the International Classification in Schedule 2.
- (3) An application may be made by a class of persons.
- (4) Where a person, who claims to be the proprietor of several trade marks for the same goods or for goods of the same description within a single class, seeks to register those trade marks and the trade marks, although they resemble each other in material particulars, differ in respect of –
  - (a) statements or representations as to the goods in respect of which the trade marks are used or proposed to be used; or
  - (b) statements or representations as to number, price, quality or names of places; or
  - (c) other matter which is not distinctive and does not substantially affect the identity of the trade marks; or
  - (d) colour,

or in respect of any two or more of those matters, the trade marks may be registered as a series in one registration.

**36. Examination** - The Registrar must -

- (a) examine whether the application complies with the requirements of section 35; and
- (b) examine and determine whether the mark is a mark as defined in section 33 and is registrable under section 34.

**37. Acceptance and Publication** - If the Registrar is satisfied that the conditions referred to in section 36 are fulfilled, he or she must accept the application and cause the application, as accepted, to be published in the Savali.

**38. Opposition** - (1) Any person may, within 3 months from the date of publication under section 37, give written notice to the Registrar of opposition to the registration of the mark on the grounds that one or more of the requirements of sections 33 and 35 are not fulfilled.

- (2) The Registrar must send a copy of the notice to the applicant.
- (3) The applicant must within 2 months from receiving the copy of the notice send to the Registrar a written counter-statement of the grounds on which the applicant relies.



(4) Where the applicant does not provide a counter-statement in accordance with subsection (3), the applicant is deemed to have abandoned the application.

(5) Where the applicant sends a counter-statement, the Registrar must provide a copy of it to the person giving notice of opposition.

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

- (a) hearing both parties (where they wish to be heard); and
- (b) considering the merits of the case.

(7) Any person who is aggrieved as a result of a decision of the Registrar under subsection (6), may appeal the decision to the Supreme Court.

**39. Withdrawal of application** - An applicant for the registration of a mark may withdraw the application at any time during its review.

**40. Registration of mark** - (1) If the Registrar is satisfied that the conditions referred to in section 36 are fulfilled, and either -

- (a) the registration of the mark has not been opposed within the period referred to in section 38; or
- (b) the registration of the mark has been opposed and the opposition has been withdrawn or has been decided in the applicant's favour,

the Registrar must register the mark, publish a reference to the registration and issue to the applicant a certificate of registration.

(2) Where an Applicant does not satisfy the conditions referred into section 36 the Registrar must refuse the application.

**41. Rights conferred by registration** - (1) Any person intending to use a registered mark in relation to any goods or services for which it has been registered must first obtain the consent of the registered owner of the mark.

(2) The registered owner of a mark has the right to commence court proceedings against any person who infringes the mark by using the mark without the owner's consent or who performs acts which make it likely that infringement will occur.

(3) 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.

(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 in Samoa by the registered owner or with the owner's consent.

(5) The provisions of section 34 (e) and (f) apply with necessary modifications in any action instituted by the owner of a well-known mark against any person in respect of the unlawful use of the well-known mark.

(6) No registration under this Act shall interfere with any bona fide use by a person of his or her own name or the name of his or her place of business or the name of the place of business of any of his or her predecessors in business or the use by any person of any bona fide description of the character or quality of his or her goods.

(7) Nothing in this section shall be taken to affect rights of action against any person for passing off goods as those of another person or the remedies in respect relating to those actions.

**42. Duration and renewal -** (1) The registration of a mark is for a period of 7 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 7 years upon the payment of the determined renewal fee.

(3) Any renewal of registration must be made within 12 months from the date of the expiry of the registration.

(4) A late renewal fee will apply after the 12 months period under subsection (3) expires.

(5) The Registrar may extend the time for a renewal under this section by 6 months.

**43. Invalidation -** (1) Any 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 35 and 36 are not fulfilled.

(3) Any invalidated mark has no legal effect from the date of the registration of the mark.

(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 Registry at the earliest opportunity.

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

**44. Removal on grounds of non-use** - (1) Subject to subsections (2) and (3), any interested person may request the Registrar to remove a mark from the register.

(2) The Registrar may remove a mark where he or she is satisfied that up to 1 month prior to filing the request the mark had, after its registration, not been used 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 no intention not to use or to abandon it.

**45. Collective marks** - (1) Subject to subsections (2) and (3), sections 33 to 44 apply to collective marks, except that references therein to section 32(a) are to be read as references to section 32(b).

(2) Where 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).

(3) In addition to the grounds specified in section 43, 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;
- (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 deceive as to the origin or any other common characteristics of the goods or services concerned.

**46. Assignments and transmissions** - (1) A registered trade mark may be assigned and transmitted with or without the goodwill of a business, and in respect of all or some of the goods for which it is registered.

(2) Subject to any rights vested in any other person, the owner of a registered trade mark may assign and give effectual receipts for any consideration for an assignment of the mark.

(3) The Registrar shall register an assignment or transmission on being satisfied of the validity of the transaction.

- (4) Any rights under any assignment shall have effect only from the date of the entry of the assignment in the register by the Registrar.

## **PART VI PLANT BREEDER'S RIGHTS**

### **47. Definition of “breeder” and “plant” - (1) In this Act:**

- (a) **“breeder”** in relation to a new variety, means—
- (i) the person who directed the final breeding of the new variety or who developed or discovered the new variety; or
  - (ii) the legal representative of the person referred to in paragraph (a);
- (b) **“new variety”** means a variety of plant that:
- (a) was not offered for sale or marketed—
    - (i) in Samoa prior to the date of application; or
    - (ii) in any other country in respect of —
      - A. trees and grapevines, for longer than 6 years before the date of application;
      - B. any other plant, for longer than 4 years before the date of application;
  - (b) it is distinct from any other variety the existence of which is a matter of common knowledge at the date of application; and
  - (c) it is sufficiently uniform in its relevant characteristics, subject to the variation that can be expected from the particular features of its propagation; and
  - (d) it is stable.
- (c) **“plant”** means any variety of plant and includes a fungus;
- (d) **“plant breeder’s rights”** means the rights granted under section 56.

**48. Persons entitled to make application for plant breeders rights – (1)** Subject to subsection (2), an application for the grant of plant breeders rights in respect of a new variety may be made by or on behalf of any of the following persons—

- (a) a breeder of the new variety or his or her assignee; or
- (b) the Minister responsible for Agriculture, where the State is the breeder of the new variety or the breeder’s assignee; or
- (c) the competent authority according to the laws of the country concerned, where the government of a reciprocating country is the breeder of the new variety or the breeder’s assignee; and may be made by that person alone or jointly with any one else who is a breeder of the new variety or his or her assignee.

(2) An application for the grant of plant breeders rights shall be made only by a person to whom the rights may be granted in section 49.

**49. Persons to whom plant breeders rights may be granted -**  
The Registrar must not grant plant breeders rights to any person except—

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

where the State or that government, individual, company or body corporate is a breeder of the new variety concerned.

**50. Application for plant breeders rights -** (1) An application for the grant of plant breeders rights shall be—

- (a) made in the prescribed form; and
  - (b) lodged with the Registrar in the prescribed manner.
- (2) An application shall be lodged with the Registrar and—
- (a) shall indicate the origins of the plant concerned and give the full name of the breeder; and
  - (b) where the applicant or one of the applicants is not the breeder of the plant concerned, the application shall contain a declaration that the applicant believes the person named as the breeder to be the breeder of the plant concerned; and
  - (c) shall specify any foreign country where an application for the grant of rights similar to plant breeders rights has been or is being made and, in relation to any such application, shall specify—
    - (i) its number or title; and
    - (ii) its effective date.

(4) Subject to subsection (5), the effective date of an application in terms of subsection (1) shall be the date on which the application is received by the Registrar.

(5) Where the person by or on whose behalf an application is made in terms of subsection (1) has filed an earlier application for rights in regard to the plant concerned in a reciprocating state, the effective date of his or her application in terms of subsection (1) shall be deemed to be the date on which that earlier application was filed.

(6) Where the person has filed two or more such earlier applications, the date on which the earliest one was filed shall be taken as the effective date.

**51. Description and samples of new variety -** (1) An application in terms of section 50 shall be accompanied by—

- (a) a complete description of the plant concerned; and
  - (b) samples of reproductive material necessary for the reproduction of the plant concerned in such quantities as the Registrar may require.
- (2) The description referred to in paragraph (a) of subsection (1) shall—

- (a) commence with a title naming the plant concerned or giving it a temporary designation until the grant of plant breeders rights; and
  - (b) contain or be accompanied by such other particulars as may be prescribed or required by the Registrar; and
  - (c) specify the procedure to be used for the maintenance and reproduction of the plant concerned.
- (3) The Registrar may require—
- (a) that the plant concerned or the plant or plants from which it originated be shown to the Registrar or to a designated person; and
  - (b) that any additional information or specimens which the Registrar considers necessary to determine whether or not the plant concerned constitutes a new variety be provided.

**52. Naming of plant concerned -** (1) The name of the plant concerned shall be proposed by the person who applies for the grant of plant breeders rights but such name shall be subject to the approval of the Registrar.

(2) The Registrar may at any time before the grant of plant breeders rights, after considering any representations made by the applicant or a person opposing the application, refuse any name proposed in terms of subsection (1) if, in the Registrar's opinion, the name proposed does not satisfy the requirements of subsection (3) or (4).

(3) The name proposed in terms of subsection (1) shall be the generic name of the plant concerned and may consist of any word, combination of words, combination of words and figures or combination of letters and figures, with or without any meaning: Provided that—

- (a) whatever combination is used, the name shall allow the plant concerned to be identified; and

- (b) the name shall not affect the existing rights of any third party.

(4) Where a name proposed in terms of subsection (1) has already been used for the plant concerned in Samoa or a reciprocating State, or is proposed or registered in such a State, the Registrar shall approve only that name.

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

**53. Refusal of application -** (1) The Registrar may refuse any application if it appears that—

- (a) the application does not comply with the requirements of this Part; or
- (b) the plant in respect of which the application has been made is not a new variety of a prescribed kind; or
- (c) the applicant is not entitled in terms of this Act to make the application; or
- (d) the growing of the plant concerned, or the grant of plant breeders rights in respect of it, would be contrary to public order or morality; or
- (e) the production of the plant concerned would require the repeated use of the reproductive material of another plant variety for which plant breeders rights have been granted to or applied for by another person unless such reproductive material is used under a licence granted in terms of section eighteen or nineteen.

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

**54. Amendment of application -** (1) Subsection to subsection (2), a person who has made an application under this Part may, at any time before the grant of plant breeders rights, add to or alter the description lodged with the application or the proposed name of the plant concerned.

(2) An alteration under subsection (1) must only be made with the consent of the Registrar.

**55. Publication of application –** Where 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 breeders rights in respect of it, the Registrar shall publish a notice in the Savali with the following particulars:

- (a) the name of the applicant; and

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

**56. Rights of applicant for plant breeders rights -** (1) Subject to subsection (2), an applicant for plant breeders rights shall have the sole right to sell, reproduce and multiply reproductive material of the plant concerned during the period from the publication of the notice until he or she is granted plant breeders rights or his or her application is refused.

(2) After the publication of a notice under section 55, and until the applicant is granted plant breeders rights or his or her application is refused -

- (a) a person may use the plant concerned as an initial source of variation for the purpose of creating any other new variety: Provided that this paragraph shall not apply where the plant concerned is repeatedly used for the reproduction or multiplication of another variety;
- (b) a person who has purchased the plant concerned, or reproductive material thereof, from the applicant or from a person authorised by the applicant may grow and resell the plant and any material harvested from it: Provided that he or she shall not do so for the sole or primary purpose of reproducing or multiplying the plant concerned;
- (c) a farmer who cultivates less than 10 hectares of land may use the harvest from any prescribed plant for the purpose of propagating the plant on that land, where the harvest was obtained by propagating the plant concerned on that land or by propagating another plant, which is essentially derived from the plant concerned, on that land;
- (d) a farmer who derives at least 80 per cent of his or her annual gross income from farming on customary land may—
  - (i) multiply the seeds of any prescribed plant; and
  - (ii) exchange with any other such farmer—
    - A. any prescribed plant which he or she has grown or reproduced on his or her land; and
    - B. any seeds from a plant referred to in subparagraph A,

and such conduct shall not be an infringement of the applicant's rights under subsection (1).

**57. Opposition to grant of plant breeders rights -** (1) Any person may, within 3 months of the publication of the notice under section



55, lodge with the Registrar a written opposition to the grant of plant breeders rights on any of the following grounds only—

- (a) that the application does not comply with this Part; or
- (b) that the application infringes the rights of the opposing person or of any person under or through whom he or she claims the rights; or
- (c) that the applicant is not entitled to make the application; or
- (d) that the application contains a material misrepresentation; or
- (e) that the plant concerned is not a new variety; or
- (f) that the plant concerned is not of a prescribed kind; or
- (g) that the name proposed for the plant concerned should be rejected or altered under section 54; or
- (h) that the plant concerned has been reproduced by the repeated use of the reproductive material of a plant of another variety for which plant breeders rights have been granted to or applied for by a person other than the applicant, unless such reproductive material is used under a licence; or
- (i) that the description of the plant concerned does not clearly describe the variety of the plant.

(2) A notice under subsection (1) shall—

- (a) specify the grounds on which the person opposing the application opposes the grant of plant breeders rights; and
- (b) be accompanied by a statement setting out particulars of the facts alleged in support of the said grounds.

(3) The Registrar may require that a notice be supported by an affidavit and any other proof as the Registrar thinks necessary.

(4) If the applicant for plant breeders rights wishes to contest the allegations of an opposing person, he or she shall, within 3 months, or such further period as the Registrar may allow, from the date he or she is provided with a copy of the notice, lodge with the Registrar a counter-statement setting out particulars of the grounds upon which he or she will contest the opposition notice.

(5) The Registrar shall furnish—

- (a) an applicant for plant breeders rights with a copy of any notice of an opposition lodged;
- (b) an opposing person with a copy of any counter-statement lodged.

(6) An opposition or counter-statement may be lodged by the Minister on behalf of the State.

(7) The Registrar shall, after hearing the parties if so required and considering the evidence, decide whether or not the opposition should be upheld, and if he or she—

(a) upholds the opposition and, in the case of an opposition on the grounds referred to in paragraph (g) of subsection (1) the applicant does not alter the name of the plant concerned, the Registrar shall refuse the application and shall—

(i) forthwith notify the applicant and the opposing person in writing of such refusal; and

(ii) within 1 month of such refusal, publish in the Savali notice of the refusal: Provided that if an appeal is lodged, the notice shall not be published until such time as the appeal has been determined;

(b) does not uphold the opposition, he or she shall notify the applicant and the opposing person of his or her decision.

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

**58. Refusal or grant of plant breeders rights -** (1) The Registrar shall investigate or cause to be investigated any application under this Part in order to determine whether—

(a) the plant concerned should be regarded as a new variety of a prescribed kind; and

(b) the applicant is entitled in terms of this Act to make the application.

(2) Subject to subsection (4), if, after an investigation, the Registrar considers that the plant should be regarded as a new variety of a prescribed kind and that the applicant is entitled to apply for plant breeders rights the Registrar shall—

(a) grant to the applicant plant breeders rights in respect of the plant; and

(b) note in the Register the prescribed particulars of the person to whom, and of the plant in respect of which, such rights have been granted; and

(c) issue or cause to be issued to the applicant a certificate of registration of plant breeders rights in respect of the plant.

(3) Within 1 month of the grant of plant breeders rights under this Part, the Registrar shall publish in the Savali a notice giving such particulars of the grant as he or she thinks fit.

(4) The Registrar shall grant plant breeders rights within a period of 3 years after the publication of the notice unless the application has been—

- (a) refused in terms of section 53; or
  - (b) refused under section 57; or
  - (c) refusal on the ground that the applicant is not qualified for the grant of plant breeders rights.
- (5) If, after an investigation the Registrar considers that—
- (a) the application for plant breeders rights does not comply with the requirements of this Act; or
  - (b) the plant in respect of which the application has been made is not a new variety of a prescribed kind; or
  - (c) the applicant is not entitled to make the application;

the Registrar shall refuse the application and shall forthwith advise the applicant in writing of his or her decision and the grounds upon which it is based.

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

**59. Cancellation of plant breeders rights -** (1) Subject to subsection (4), the Registrar shall declare a grant of plant breeders rights void if he or she is satisfied—

- (a) that when the rights were granted, the plant concerned was not a new variety in that it did not meet the criteria for a plant to be considered a new variety; or
- (b) where the rights were granted on the basis of information and documents provided by the applicant, that when the rights were granted the plant concerned was not a new variety;
- (c) that the person to whom the rights were granted was not entitled to them, and the rights have not subsequently been transferred to the person entitled to them or to his or her assignee.

(2) The Registrar may make a declaration under subsection (1) on his or her own motion or pursuant to an application in terms of subsection (3).

(3) Any person may apply to the Registrar for the making of a declaration under subsection (1) in regard to any plant breeders rights, and any such application shall be accompanied by a determined fee.

(4) The Registrar shall not make a declaration under subsection (1) unless he or she has—

- (a) informed the holder of the plant breeders rights concerned that he or she is considering making such a declaration and has provided the holder with a written statement of his or her reasons for considering it; and
- (b) given the holder of the plant breeders rights concerned a reasonable opportunity to make representations in the matter.

(5) The Registrar shall publish a notice of a declaration under subsection (1) in the Savali after 1 month of it being made.

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

**60. Duty of holder of plant breeders rights to maintain reproductive material -** (1) A holder of plant breeders rights shall ensure that throughout the period for which the rights are exercisable he or she is in a position—

- (a) to produce to the Registrar reproductive material which is capable of producing the variety to which the rights relate with the morphological and physiological and other characteristics taken into account when those rights were granted in respect of that variety; and
- (b) to afford to the Registrar all information and facilities as the Registrar may request for the purpose of satisfying the Registrar that the holder of the plant breeders rights is fulfilling his or her duty under paragraph (a), including facilities for the inspection by or on behalf of the Registrar of the measures taken for the preservation of the variety concerned.

(2) If it appears to the Registrar that a holder of plant breeders rights—

- (a) is no longer in a position to provide the reproductive material referred to in subsection 1 (a); or
- (b) has failed to comply with any request under subsection (1)(b),

the Registrar may cancel those rights.

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

**61. Rights of holder of plant breeders rights -** (1) Subject to this section, during the period specified in section 58(4), a holder of plant breeders rights shall be entitled to prevent anyone else from selling, reproducing or multiplying reproductive material of—

- (a) the plant concerned; and

- (b) any other plant that is essentially derived from the plant concerned, as described in subsection (2), unless the plant concerned is itself essentially derived from another plant.

(2) For the purposes of subsection (1), a plant shall be deemed to be essentially derived from another plant if—

- (a) it is predominantly derived from—
  - (i) that other plant; or
  - (ii) a plant that is itself predominantly derived from that other plant;

while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of that other plant; and

- (b) it is clearly distinguishable from that other plant by one or more characteristics which are capable of precise description; and
- (c) except for differences that result from the act of derivation, it conforms to that other plant in the expression of the essential characteristics that result from the genotype or combination of genotypes of that other plant,

whether the plant has been derived through the selection of a mutant or variant, or through crossing, genetic engineering or any other means.

(3) Despite the grant of a plant breeders rights under this Part in relation to any plant—

- (a) a person may use the plant as an initial source of variation for the purpose of creating any other new variety: Provided that this paragraph shall not apply where the plant is repeatedly used for the reproduction or multiplication of another variety;
- (b) a person who has purchased the plant, or reproductive material thereof, from the holder of plant breeders rights or from a person authorised by the holder may grow and resell the plant and any material harvested from it: Provided that he shall not do so for the sole or primary purpose of reproducing or multiplying the plant;
- (c) a farmer who cultivates less than 10 hectares of land may use the harvest from any prescribed plant for the purpose of propagating the plant on that land, where the harvest was obtained by propagating the plant on that land or by propagating another plant, which is essentially derived from the plant concerned, on that land;

- (d) a farmer who derives at least 80 per centum of his annual gross income from farming on customary land may:
  - (i) multiply the seeds of any prescribed plant; and
  - (ii) exchange with any other such farmer—
    - A. any prescribed plant which he or she has grown or reproduced on his or her land; and
    - B. any seeds from a plant referred to in subparagraph A;
  - (iii) donate any plant or seed referred to in subparagraph (ii) to the State or a statutory body or to another organization,

and such conduct shall not be an infringement of the holder's rights under subsection (1).

**62. Duration of plant breeders rights** - (1) The term of the plant breeders rights shall be 20 years from the date on which they were granted.

(2) If the Registrar is satisfied, on application by a holder of plant breeders rights, that for reasons beyond the applicant's control the applicant has not been adequately remunerated by the grant of such rights, the Registrar may extend the term of the rights for such further period, being not more than 5 years, as the Registrar considers suitable in the circumstances, which extension may be made subject to such conditions, if any, as the Registrar considers to be desirable.

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

**63. Compulsory licences** - (1) Subject to this section, any person interested who can show that he or she has been unable to obtain a licence under this Part in respect of a variety in respect of which plant breeders rights have been granted may apply in the prescribed manner for a compulsory licence on the ground that the reasonable requirements of the public with respect to the variety concerned have not or will not be satisfied.

- (2) An application under subsection (1) must —
  - (a) set out fully the nature of the applicant's interests, the facts on which he or she bases his or her case and the relief he or she seeks; and
  - (b) be accompanied by—
    - (i) an affidavit verifying the facts set out in the application; and
    - (ii) a certificate from the Minister stating that it is in the public interest that the variety concerned be made freely available to the public.

- (3) An application shall be lodged with the Registrar.
- (4) Upon receiving a lodged application, the Registrar must provide the holder of the plant breeders rights with a copy of the application and the particulars accompanying it.
- (5) The holder of the plant breeders rights may contest the application by filing an a counter-statement to the application.
- (6) A counter-statement under subsection (5) must be made within 1 month from the date the holder of breeders rights received an application under subsection (3).
- (7) The Registrar shall provide a copy of the counter-statement to an applicant.
- (8) On receipt of the counter-statement lodged or the expiration of the period specified in subsection (6), whichever is the earlier, the Registrar shall grant a licence upon such conditions, as her or she may fix and specifying in particular:
  - (a) the period of the licence; and
  - (b) the amount and method of payment of royalties.

**64. Surrender of plant breeders rights** - (1) A holder of plant breeders rights who wishes to surrender such rights may apply, by notice in writing, to the Registrar for the surrender of his or her rights.

- (2) Within 1 month of giving notice under subsection (1), the holder of the plant breeders rights shall advertise in the Savali that he or she intends to surrender the rights.
- (3) Any person who is aggrieved by the proposed surrender of plant breeders rights under this section may, within 3 months of the date of the advertisement in the Savali give notice to the Registrar in writing of his or her opposition to the surrender, which notice shall specify the grounds of opposition.
- (4) If, after hearing the holder of the plant breeders rights and any opponent who wishes to be heard, the Registrar is satisfied that the holder of the plant breeders rights should be permitted to surrender such rights, he or she shall—
  - (a) revoke the plant breeders rights; and
  - (b) note in the Register that such rights have been revoked; and
  - (c) call upon the holder to surrender the certificate of registration of plant breeders rights issued in terms of this Act: Provided that where no notice of opposition has been given in terms of this section, it shall not be necessary for the Registrar to hear the holder of the plant breeders rights.

(5) Within 1 month of the revocation of plant breeders rights under subsection (4), the Registrar shall publish in the Savali notice of such revocation.

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

## **PART VII GEOGRAPHICAL INDICATIONS**

**65. Definitions of “area”, “geographical indication”** - For the purposes of 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, where 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 66;

“**product**” means any natural or agricultural product or any product of handicraft or industry.

**66. When geographical indication regarded as misleading** -  
(1) A geographical indication shall be 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; or
- (b) if it misleads the public as to the area of origin of the product; or
- (c) if its application to or in relation to the product constitutes unlawful competition; or
- (d) in the case of 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; or
  - (iii) the geographical indication is accompanied by an expression such as “kind”, “type”, “style”, “imitation” or the like.



(2) A geographical indication shall be 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 shall be had to the general understanding of consumers or users of the product concerned where it has been, is being or is intended to be sold.

**67. When geographical indication regarded as applied to a product -** A geographical indication shall be 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.

**68. Prohibition against use of misleading geographical indications -**

(1) No person shall apply a misleading geographical indication to any product.

- (2) No person shall:
  - (a) sell any product;
  - (b) import any product for sale in Samoa;
  - (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) Any person who contravenes subsections (1) and (2) commits an offence.

**69. Institution of proceedings regarding use of misleading geographical indication -** Proceedings to prevent a contravention of section 68 or to seek any other remedy arising out of such contravention may be instituted by any interested person in the Court.

**70. Remedies available in proceedings regarding use of misleading geographical indication -** (1) In proceedings referred to in section 69, an interested person shall be entitled to any appropriate remedy, whether injunction, damages, attachment or otherwise, that is available in respect of the infringement of any proprietary right.

(2) If it is established, in proceedings referred to in section 69, that the defendant contravened section 68 and the Court, having 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,

is satisfied that effective relief would not otherwise be available to the plaintiff or applicant, the Court shall have power to award any damages as it thinks fit.

(3) If it is established, in proceedings referred to in section 69 that the defendant contravened section 68 but that at the time of the contravention he or she was not aware and 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, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of that contravention.

**71. Defences available in proceedings regarding use of misleading geographical indication -** (1) If it is alleged, in proceedings referred to in section 69, that the defendant applied to any product a foreign geographical indication identifying any wine or spirit, it shall be a defence for him or her to establish that he or she used the geographical indication concerned in Samoa continuously with regard to the same or a similar product:

- (a) for at least ten years before the 15th April, 1994; or
- (b) in good faith before the 15th April, 1994.

(2) In any proceedings referred to in section 69 relating to the application of a foreign geographical indication, it shall be a defence for the defendant to establish that the indication is not or has ceased to be protected in the foreign country concerned or has fallen into disuse in that country.

(3) In any proceedings referred to in section 69 it shall be a defence for the defendant to establish that he or she is entitled to use the geographical indication concerned by virtue of section 82(3).

(4) This section shall not be construed as limiting the defences that may be available to a defendant in proceedings referred to in section 69.

**72. Presumptions where geographical indication is registered**

- In any proceedings referred to in section 69 regarding the application of a registered geographical indication it shall be presumed, unless the contrary is proved, that -

- (a) the indication concerned is a geographical indication as defined in section 65; 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.

**73. Application for registration - (1)** An application for the registration of a geographical indication shall be filed with the Registrar and shall specify:

- (a) the applicant's name, address and nationality and the capacity in which the applicant is applying for registration;
- (b) the geographical indication for which registration is sought;
- (c) the geographical area to which the geographical indication applies;
- (d) the products to which the geographical indication applies;
- (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 determined fee.

**74. 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; [a person who sells, manufactures, imports or exports for sale a product to which the geographical indication is applied [or is to be applied]];
- (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 organization established to represent or further the interests of persons referred to in paragraph (a) or (b).

**75. Examination and acceptance of application -** (1) The Registrar shall accept an application lodged with him or her in accordance with section 73 if he or she is satisfied that:

- (a) the application complies with the requirements of section 73; and
- (b) the applicant is entitled to lodge the application under section 74; 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) where 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 if the Registrar is not so satisfied, then he or she shall reject the application.

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

(2) Any person may, within 3 months from the date on which an application was advertised in accordance with 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 one or more of the requirements specified in sections 73, 74 and 75.

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

(4) The Registrar shall send a copy of such notice to the applicant and the applicant may send a counter-statement to the Registrar within 2 months of the receipt of the notice of opposition.

(5) Where the applicant fails to file a counter-statement in accordance with this subsection, the applicant shall be deemed to have abandoned his or her application.

(6) If the applicant sends a counter-statement, the Registrar shall 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, shall decide whether the geographical indication should be registered.

**77. Registration -** (1) Where the Registrar finds that the conditions referred to in section 75 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 shall register the geographical indication, publish a reference to the registration and issue to the applicant a certificate of registration.

(2) An application that does not comply with the requirements of section 75, shall be refused by the Registrar.

**78. 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.

**79. Homonymous indications -** When registering as a geographical indication a name or word which, when written or uttered, has two or more meanings, the Registrar shall 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;
- (b) that the public is not misled; and
- (c) where 2 or more of the meanings refer to different geographical areas, that all producers concerned are treated equitably.

**80. Effective date of registration -** The effective date of registration of a geographical indication shall be the date on which the application for registration was lodged with the Registrar in accordance with section 73.

**81. Effect of registration -** (1) Only producers carrying on their activity in the geographical area specified in the Register shall 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 shall 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.

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

(2) Nothing in this Act shall limit 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 shall prevent:

(a) The registration of a mark under this Act that is identical or similar to a geographical indication, where 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 trade mark that is identical or similar to a geographical indication where:

(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.

**83. Act not to be construed as limiting other laws preventing misuse of geographical indications** - This Act shall not be construed 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 VIII**

## **CIRCUIT LAYOUTS**

### **84. Definition of “integrated circuit” and “lay-out 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;

**85. Protection** (1) Protection under this Act may be obtained for layout-designs of integrated circuits if and to the extent that they are original within the meaning of section 86.

(2) Registration may only be applied for if the layout-design has not yet been commercially exploited, or has been commercially exploited for not more than two years anywhere in the world.

(3) Protection under this Act shall not be available for layout-designs which have been commercially exploited, anywhere in the world, for more than 2 years prior to the entry into force of this Act.

**86. Originality** - (1) A layout-design shall be considered to be original if it is the result of its creator’s own intellectual effort and is not common place among creators of layout-designs and manufacturers of integrated circuits at the time of its creation.

(2) A layout-design consisting of a combination of elements and inter-connections that are commonplace shall be protected only if the combination taken as a whole is original within the meaning of subsection (1).

**87. Right to protection** - (1) The right to layout-design protection shall belong to the creator of the layout-design and may be assigned or transferred by succession.

(2) Where several persons have jointly created a layout-design, the right to layout-design protection shall belong to them jointly.

(3) Where the layout-design has been created in execution of a commission or an employment contract, the right to layout-design protection shall belong, in the absence of contractual provisions to the contrary to the person who commissioned the work or to the employer.

**88. Effect of protection -** (1) Protection under this Act shall not depend upon whether or not the integrated circuit which incorporates the protected layout-design is itself incorporated in an article.

(2) Subject to subsection (3) and to section 96, the protection shall have the effect that the following acts shall be unlawful if performed without the authorization of the right holder—

- (a) reproducing, whether by incorporation in an integrated circuit or otherwise, the protected layout-design in its entirety or any part thereof, except the act of reproducing any part that does not comply with the requirement of originality referred to in section 86;
- (b) importing, selling or otherwise distributing for commercial purposes 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.

(3) The effect of protection of a layout-design under this Act shall 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;
- (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 86 or the performance of any of the acts referred to in subsection(2) in respect of that layout-design;
- (c) the performance of any of the acts referred to in subsection (2)(b) where the act is performed 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 by or with the consent of the right holder;
- (d) the performance of any of the acts referred to in subsection (2)(b) where the act is performed in respect of an identical layout-design which is original and has been created independently by a third party; or
- (e) the performance of any of the acts referred to in subsection (2)(b) in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where 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.

(4) Where however a person under subsection 3(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 shall be 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.

**89. Commencement and Duration of protection - (1)**

Protection of a layout-design under this Act shall commence—

- (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 within the time limit referred to in section 90;
- (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 shall terminate at the end of the tenth calendar year after the date of commencement of protection.

**90. Filing Requirements - - (1)** An application for the registration of a layout-design shall be in writing and shall be filed with the Registrar.

- (2) A separate application shall be filed for each layout-design.
- (3) The application shall—
  - (a) contain a request for registration of the layout-design in the register and a brief and precise designation of the layout-design;
  - (b) indicate the name, address, nationality and, if different from the address, the habitual residence of the applicant;
  - (c) be accompanied by an authorization of the agent appointing the representative of the applicant, if any;
  - (d) be accompanied by 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 on 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;
  - (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) provide particulars establishing the right to protection under section 87.

(4) Where an application does not comply with the requirements of subsection (3), the Registrar shall immediately notify the applicant of the defects and invite him or her to correct them within two months.

(5) Where the defects are corrected within the time limit under subsection (4), the Registrar shall accord, as the filing date, the date of receipt of the application, provided, at the time of receipt, the application contained an express or implicit indication that the registration of a layout-design is requested and indications allowing the identity of the applicant to be established and was accompanied by a copy or drawing of the layout-design.

(6) Where the requirements of subsection (5) were not complied with at the date of receipt of the application but are complied with within the time limit, the date of receipt of the required correction shall be deemed to be the filing date of the application.

(7) The Registrar shall confirm the filing date and communicate it to the applicant.

(8) Where the defects are not corrected within the time limit, the application shall be deemed not to have been filed.

(9) Each application for protection of a layout-design shall be subject to the payment of the prescribed fee.

(10) Where the fee is not paid, the Registrar shall notify the applicant that the application will be deemed not to have been filed unless payment is made within two months from the date of the notification and where the application fee is not paid within that time limit, the application shall be deemed not to have been filed.

**91. Register, Registration and Publication -** (1) The Registrar shall maintain a register in which he or she shall record all matters required by this Act to be recorded.

(2) Where an application complies with the requirements of section 90, the Registrar shall register the layout-design in the Register without examination of—

- (a) the originality of the layout-design;
- (b) the applicant's entitlement to protection; or
- (c) the correctness of the facts stated in the application.

(3) The Register shall contain the number, title, filing date and, where indicated in the application under section 90(3)(e), the date of first commercial exploitation anywhere in the world of the layout-design as well as the name and address of the right holder and other prescribed particulars.

(4) A person may consult the Register and obtain extracts therefrom, subject to the payment of the determined fee.

(5) The registration of a layout-design shall be published in the prescribed manner.

**92. Right to Transfer and Rectification of Register - (1)**

Where the essential content or the application has been taken from the layout design of another person without his or her consent, that other person may, in writing, request the Registrar to transfer the application to him or her.

(2) Where the application has already resulted in a registration, that person may, within three years from the publication of the registration, in writing, request the Registrar to transfer the registration to him and to rectify the entry in the Register accordingly.

(3) The Registrar shall send forthwith a copy of such a request to the right holder, and, within the prescribed period and in the prescribed manner, the right holder may send to the Registrar a counter-statement of the grounds on which he or she relies.

(4) Where the right holder sends a counter-statement, the Registrar shall furnish a copy to the person requesting the transfer and, after hearing the parties, if either or both wish to be heard, and considering the merits of the case, shall decide whether the application or registration should be transferred and, where applicable, whether the Register should be rectified.

**93. Changes in Ownership and Contractual Licences - (1)**

Any change in the ownership of a protected layout-design shall be in writing.

(2) Where a layout-design has been registered, a subsequent change in ownership shall, where an interested party makes a request to the Registrar, be recorded and published by the Registrar and such change shall have no effect against third parties until it has been recorded.

(3) Any licence contract concerning a layout-design shall, upon registration of the layout-design, be submitted to the Registrar who shall keep its contents confidential but shall publish a reference thereto and the licence contract shall have no effect against third parties until such submission has been made.

**94. Cancellation - (1)**

Any interested person may apply to the Court for the cancellation of the registration of a layout-design on the grounds that—

- (a) the layout-design is not protectable under sections 85 and 87;
- (b) the right holder is not entitled to protection under section 86;  
or
- (c) the application was not filed within the time limit referred to in sections 89 and 90, where the layout-design has been commercially exploited, anywhere in the world, before the filing of the application for registration of the layout-design.

(2) Where the grounds for cancellation are established with respect only to a part of the layout-design, only the corresponding part of the registration shall be cancelled.

(3) A cancelled layout-design registration, or part thereof, shall be regarded as null and void from the date of the commencement of protection.

(4) The Registrar of the Court shall notify the Registrar of the decision of the Court or the decision on any appeal therefrom and the Registrar shall record it and publish a reference thereto as soon as possible.

**95. Infringement and Enforcement of Exclusive Right -** (1) Infringement shall consist of the performance of any act which is unlawful under this Part.

(2) On the request of the right holder, or of his or her licensee, if the latter has requested the right holder to institute court proceedings for a specific relief and the right holder has refused or failed to do so within a reasonable time, the Court may grant an injunction to prevent infringement or an imminent infringement, award damages or grant any other remedy provided for in the general law.

(3) Proceedings under subsection (2) may be initiated only after an application for registration of the layout-design has been filed with the Registrar.

**96. Exploitation by a Government Agency or Third Person -** (1) Where—

- (a) the public interest, in particular national security, nutrition, health or the development of other vital sectors of the national economy requires the exploitation of a protected layout-design for public non-commercial use; or
- (c) a judicial or administrative body has determined that the manner of exploitation of a protected layout-design, by the right holder of his or her license, is anti-competitive, and the Minister is satisfied that the exploitation of the layout-design in accordance with this section would remedy such practice;

the Minister may decide that, even without the authorization or the right holder, a Government agency or a third person designated by the Minister may exploit the layout-design.

(2) The exploitation of the layout-design shall be—

- (a) limited in scope and duration to the purpose for which it was authorized;
- (b) predominantly for the supply of the domestic market;
- (c) non-exclusive; and

- (d) subject to the payment to the right holder of an adequate remuneration, taking into account the economic value of the Minister's authorization, as determined in the Minister's decision and where applicable, the need to correct anti-competitive practices.

(3) Upon request of the right holder or of the beneficiary of the authorization, the Minister may, after hearing the parties, if either or both wish to be heard, vary the terms of the decision authorizing the exploitation of the layout-design to the extent that changed circumstances justify such variation.

(4) Upon the request of the right holder, the Minister shall terminate the non-voluntary licence if the Minister is satisfied that the circumstances which led to his decision have ceased to exist and are unlikely to recur or that the beneficiary of the authorization has failed to comply with the terms of the authorization.

(5) Notwithstanding subsection (4), the Minister shall not terminate an authorization if he or she is satisfied that the adequate protection of the legitimate interests of the beneficiary of the authorization justifies the maintenance of the authorization.

(6) Where a third person has been designated by the Minister in accordance with subsection (1), the authorization may only be transferred with the enterprise or business of the beneficiary of the authorization or with the part of the enterprise or business within which the layout-design is being exploited.

(7) A request for the Minister's authorization shall be accompanied by evidence that the right holder has received, from the person seeking the authorization, a request for a contractual licence but that that person has been unable to obtain such a licence on reasonable commercial terms and conditions and within a reasonable time.

(8) Any aggrieved person may apply to the Court for a review of the of the Minister's decision under this section.

## **PART IX MISCELLANEOUS**

**97. Changes in ownership -** (1) Any change in the ownership of a patent, the registration of a patent, utility model, an industrial design, or the registration of a mark or collective mark, plant breeder's right, geographical indication, circuit layouts, 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 and, except in the case of an application, published by the Registrar.

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

(3) Any 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 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.

**98. Powers of entry, search and seizure-** (1) Subject to subsection (2), the Registrar may –

- (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 may only exercise powers under subsection (1) where he or she believes, on reasonable grounds that an offence is being or has been committed against this Act.

(3) The Registrar may seize any document, implement, appliance, material, container, goods, equipment, or thing which the Registrar believes on reasonable grounds is being or has been or is intended to be used in the commission of an offence against this Act.

(4) Any property seized under subsection (3) shall be kept in the custody of the Registrar.

**99. Licence contract -** (1) A copy of each licence contract concerning a patent, utility model, a registered industrial design or a registered mark, plant breeder's rights, geographical indication or circuit layout or concerning an application for any of them, must be submitted to the Registrar, who must keep its contents confidential but must record it and publish a reference to it.

(2) Until the contract is so recorded it has no effect against third parties.

**100. Agents -** (1) An applicant whose ordinary residence or principal place of business is outside Samoa must be represented by a legal practitioner resident and practising in Samoa.

(2) Any 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 shall keep a record of all agents notified under subsection (2).

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

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

(2) The Registrar shall be responsible for all matters relating to the procedure for the grant of patents, utility models, the registration of industrial designs, marks, collective marks, plant breeders rights, geographical indications, circuit layouts protections, and for the administration of granted rights and protections as provided for under this Act.

(3) Any person appointed as Registrar shall 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 industrial property law.

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

**102. Registers** - (1) The Intellectual Property Registry must maintain separate registers for patents, utility models, industrial designs, marks, collective marks, plant breeder's rights, geographical indications and circuit layouts.

(2) The Registers may be inspected by any person, and any person may obtain extracts from it upon the payment of a determined fee.

(3) The Intellectual Property Registry must publish in the Savali all the publications provided for in this Act.

**103. Corrections 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) An extension under subsection (2) may be granted even though the time for doing the act or taking the proceeding has expired.

**104. Language of documents and translations** - Any application under this Act shall be in English and any document forming part of an

application or submitted to the Registrar which is in a language other than English shall be accompanied by certified English translations.

**105. 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.

**106. 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) Any decision taken by the Registrar under this Act, in particular the grant of a patent, a utility model or the registration of an industrial design or of a mark, or collective mark, geographical indication circuit layout, 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 provide for in the Act, be filed within 2 months of the date of the decision.

**107. Infringement** - (1) The performance of any act which infringes the rights and protections under this Act in Samoa by a person other than the owner of the right or title of protection, and without the agreement of the owner, constitutes an infringement.

(2) 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.

(3) Any person who knowingly performs an act which constitutes an infringement in relation to any right or protection accorded by this Act 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.

(4) For the purposes of proceedings, other than criminal proceedings, in respect of the violation of the rights of the owner of the patent, if the subject matter of the 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 has been unable through reasonable efforts to determine the process actually used.

(5) In requiring the production of evidence, the court before which the proceedings referred to in subsection (4) takes place must take into



account the legitimate interests of the alleged infringer in not disclosing manufacturing and business secrets.

**108. Convention applications -** (1) Where any 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 2 years from the date of the application for protection in the Convention country, for registration of the right or protection; he or she shall be entitled, if his or her right or protection is otherwise registrable in terms of this Act, to registration of his or her right or protection in priority to other applicants and the registration shall have the same date as the date of the application in the Convention country.

(2) Where applications have been made for the registration of a right or protection in two or more Convention countries, the period of 2 years referred to in paragraph (b) of subsection (1) shall be reckoned from the date on which the earlier or earliest of those applications was made.

(3) Where a person has applied for protection for a right or protection by an application which in accordance with—

- (a) the terms of a treaty subsisting between any two 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;

he or she shall be deemed for the purposes of this section to have applied in that Convention country.

(4) The registration of a right or protection shall 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 shall be made in the same manner as is required in the case of any ordinary application under this Act, save that proof of application in a Convention country shall be established in the manner prescribed.

(6) In this section:

- (a) “**Convention country**” means a member of the Paris Convention;
- (b) “**right or protection**” means any right or protection pertaining to patents, utility models, mark,

collective marks, plant breeder's rights, geographical indications and circuit layouts as are duly accorded under this Act.

**109. Civil protection for the Registrar** -(1) Claims made by or against the Registrar shall be made pursuant to the Government proceedings Act 1974.

(2) Despite any other law, save for the Constitution, 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 shall be brought or maintained against:

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

(3) The government and the Registrar shall not be 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.

**110. Fees** -(1) The Minister, may by Notice published in the , Savali, determine –

- (a) the types of fees payable; and
- (b) the rate at which such fees are to be calculated; and
- (c) the amounts of such fees,

in respect of any matter under this Act.

**111. 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) Any late payment of fees shall be subject to a late payment fee determined by the Minister.

**112. 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.

**113. General offences and penalties -** (1) Every person commits an offence who acts in contravention of or fails to comply with any provision of this Act, or any notice, direction, restriction, requirement, or condition given, made, or imposed under this Act.

(2) Every person who commits an offence against this Act for which no other penalty is prescribed shall be liable on conviction to a fine not exceeding 1,000 penalty units or imprisonment for a term not exceeding 5 years, or both, 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.

(3) Nothing in subsection (1) shall apply to any person carrying out any duties or responsibilities imposed or required under this Act while an employee, agent or representative of the Government.

**114. 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 the generality of 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) 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, where the offence is a continuing one, a further fine not exceeding 5 penalty units for every day that the offence has continued;
- (k) prescribing any other matter, which is required or authorised to be prescribed by this Act.

**115. Repeal -** (1) The following enactments are repealed-

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

**116. Savings and Transitional –** (1) All patents granted and trademarks registered under the Repealed enactments, remain in force and, subject to subsections (2) and (3), are deemed to have been granted or registered under the corresponding provisions of this Act.

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

(3) Trademarks deemed to have been registered by virtue of subsection (1) are due for renewal within the same period as provided for under the corresponding provisions of this Act, and upon renewal, will be reclassified in accordance with the International Classification.

(4) Any 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, shall 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, where 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.

(5) 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 shall 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.

(6) Any reference to any provision or matter under or concerning the repealed enactments in any enactment shall 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 Industrial Designs (Section 26)**

<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>	BRUSHWARE
<b><u>Class 5</u></b>	TEXTILE PIECEGOODS, 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 35)

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

Item number (Class number)	Class (Class heading)	of goods
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	

<b>Item (Class number)</b>	<b>number (Class heading)</b>	<b>Class (Class heading)</b>	<b>of</b>	<b>goods</b>
		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; preparations for destroying vermin; fungicides, herbicides		
6		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 therewith, not included in other classes; jewellery, precious stones; horological and chronometric		

Item (Class number)	number	Class (Class heading)	of	goods
		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; steel wool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes		
22		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		



Item (Class number)	number	Class (Class heading)	of	goods
		(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		

Part 2            Classes of services

Item (Class number)	number	Class (Class heading)	of	services
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		

Item (Class number)	number	Class (Class heading)	of	services
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		